











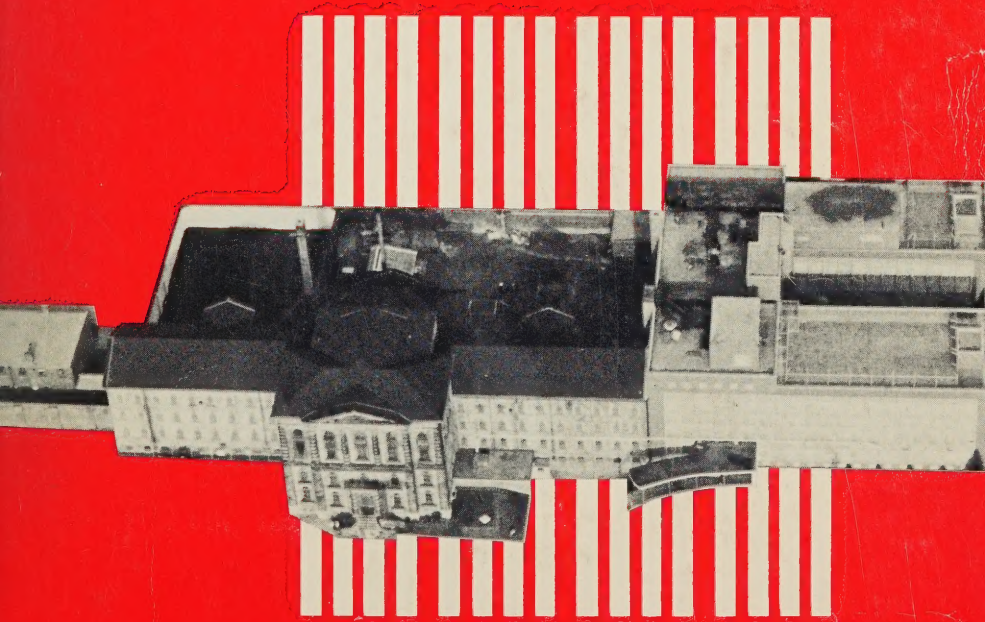


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REPORT OF THE  
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VOLUME 4


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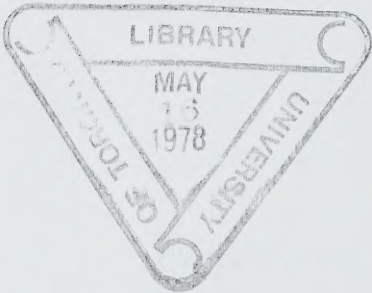
REPORT OF THE  
Royal Commission  
on the Toronto Jail  
and Custodial Services

VOLUME 4

*Commissioner:*  
His Honour Judge B. Barry Shapiro



Queen's Printer for Ontario





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REPORT OF THE  
Royal Commission  
on the Toronto Jail  
and Custodial Services

VOLUME 4





## The Martin and Bible Allegations

*"Mr. Casey stated again, 'I told you not to lie to the sergeant' and at that time I received I believe it was four or five more blows in the stomach and he came down with his fist on the right-hand side of my neck very hard, at which I doubled right over." (Robert Martin)*

*"He said: 'Is your father the judge?' And I said: 'Yes.' This is because I thought it might have a bearing on the beating I was getting that it would be stopped, terminated at that time. . . . I received a lecture for about 60 seconds, approximately, on what a good man my father was." (Robert Martin)*

*"I told the nurse, 'I have been beaten and I am afraid to say anything with the guard present.' " (Robert Martin)*

*"... so I said: 'Bible, when I get what I am looking for your charges will be dropped.' And I got what I was looking for." (C.O. 4 John Patterson)*

*"I was there. I don't go for the rough stuff. Sometimes you have to be rough, but don't look for it." (C.O. 4 John Patterson)*

*"... when he come across [with] services rendered I tore it [the Misconduct Report] up." (C.O. 4 John Patterson)*

*"If there was any hands laid on Bible, it was to guide him into the elevator,*

*but at no time did Mr. Casey or myself strike Bible or even put the boots to him, as the phrasing goes.” (C.O. 2 William Turnbull)*

Robert Melvin Martin first gained attention through an article that appeared in the *Toronto Star* on Wednesday, October 2, 1974. This article, published before the setting up of the Commission, together with the publicized allegations by Gary Dassy and Jane Mannerholm, was partly responsible for the decision to hold a public inquiry into the Toronto Jail. It was, therefore, interesting to see whether Martin's allegations given to the press would coincide with his sworn evidence before the Commission, and also whether, in the light of other evidence, they were valid.

In appearance, Martin was every bit the respectable businessman that he contended he was, and it was undoubtedly true that he gave the impression of a responsible citizen whose misfortune it was to have found himself in an alien atmosphere such as that of the Toronto Jail.

## EVIDENCE OF ROBERT MELVIN MARTIN

At the time of giving evidence on February 24, 1975, Martin was approaching his 31st birthday. He was born in England; his father was in the Canadian armed services and met his mother in England. After the war, when he was about a year old, the family came to Canada. He said that he grew up in Vancouver and moved to Toronto with his family when he was 18 or 19.

Martin was convicted in February 1974 on charges of dangerous use of a firearm and carrying a concealed weapon, and was sentenced in March 1974 to concurrent terms of 60 days, to be served on weekends. These were the only convictions on his record and they apparently arose out of a single occurrence.

At the time of giving evidence, Martin was no longer resident in Ontario, and it should be mentioned that he co-operated with the Commission by attending and giving evidence at the hearings.

Martin stated that the May 25-26 weekend was the tenth he had served and it was supposed to be the last. He entered the jail on Friday, May 24, 1974, at approximately 6:30 p.m.

Martin said he was put in 11 dormitory just before 7:00 p.m. and he recalled that a cribbage game was in progress there at the time.

He had a migraine headache on Saturday, and was taken to the doctor and given two 217 tablets in the afternoon. He had no dinner that evening, he said. He was not feeling well and lay down on the bed. About three-quarters of an hour after the dinner time, two correctional officers entered the dormitory.

# Toronto Jail guards beat and abused him says businessman, 30

By PAT MCNEELY  
Star staff writer

Toronto businessman Robert M. Martin remembers the 10 weekends he served earlier this year in Toronto Jail as a nightmare.

The 30-year-old vice-president of a cosmetic distributing firm says that during his stays in the 109-year-old jail he was:

Beaten by a guard:  
Afraid to sleep at night because of marauding rats;  
Amazed to see other inmates smoking marijuana or getting stoned on drugs;  
Martin ended up in jail for firing two shots in the air during a domestic dispute involving his former wife.

## NO PROOF FOUND

The Ministry of Correctional Services investigated Martin's claim that he was struck by a guard nine times in the stomach and once on the neck, but could not find any corroboration.

Information director Don Kerr said the ministry is prepared to turn over its own investigation files on Martin's claim to Metro police officers investigating allegations of guard brutality at the jail.

A former guard, Gary Dassy, told The Star he was a member of a six-man "goon squad" that systematically beat inmates. He said he personally took part in 15 beatings of inmates during the 4½-month period he worked at the jail.

## ON DRUGS

Martin said it was usual for up to eight of the 22 men in his dormitory on the third floor of the jail's old wing to be high on drugs.

He said these weekend inmates entered the dormitory between 6 and 8 p.m. on Fridays and by 11 p.m. would be staggering around or flaked out in bed. He said they remained "stoned" for most of the weekend.

Martin said these inmates serving weekend sentences were often pushers who boasted of making \$25,000 a year in drug sales on Yonge St. He said they smuggled the marijuana and other drugs into jail in a plastic bag in their rectums.

## HONEY OIL

Once in the dormitory, the inmates would excrete their drugs and make cigarettes of their smuggled marijuana.

He said some of them used a highly concentrated liquid form of the drug, which they called "honey oil."

A smear on a cigarette paper was enough to get them high, he said.

Martin said that on



ROBERT MARTIN  
Says drugs plentiful

whom they're believed to have discovered drugs, and beat him before leading him away.

Martin said he was then back alone into the dormitory, where a guard held a package of a variety of pills and asked whether they were his.

When Martin denied they were his, he said, a guard told him: "Don't lie to the sergeant."

When Martin insisted he was telling the truth, he said, a guard began beating him.

"I was completely doubled over and pleaded with the guard not to hit me any more," he said.

## SON OF JUDGE

Martin said the blows ended when one guard erroneously said he was the son of "Walter Martin, the judge."

(Martin's father has the same first name and but is as Judge Martin, but they are not related.)

Martin said the sergeant asked whether he was the judge's son.

To stop the beating, Martin said he was.

In place of the blows, Martin said, the sergeant gave him a lecture "on what a good man my father was, about all the criminals he had put in jail, that they were trying to take his life and how could you do such a thing?"

Martin denies the drugs were his and maintains he has never used drugs or had anything to do with them.

A ministry spokesman said two medical pills were found between the sections of the sole of Martin's shoes and he was charged with having contraband in jail.

Martin spent a day in a segregation cell, known as "the hole" to inmates, and had to serve two more weekends in jail.

He described "the hole" as "the most frightening place on earth."

Inmates of "the hole" are stripped of their clothes and given a plastic gown resembling a small nightie, he said.

"It's cold. You sit in a corner and you shiver. The guards come around every

half-hour and bang the door, making obscene comments like 'You S.O.B., you're going to get yours.'"

He said the old section of the jail, is a "fire trap," infested with rats, mice and cockroaches.

Martin described most of the guards as a "bunch of good fellows, easy to get along with and to talk to who are trying to do a good job."

But he maintained, just about one-quarter of them are "uneducated sadistic animals. I don't know what a storm trooper was but I would say they fit right along the same lines. They (guards) take great pleasure out of just leaving off and slapping or belting someone in the face."

Martin asked that he be allowed to spend the extra two weekends at another jail and told ministry officials to drive as far as 200 m.

He was told to report to the county jail in Whitby, where he worked in the kitchen.

"It was the Ritz after that floghouse the jail," he said.

## POLICE TEAM TO PROBE 'GOON SQUAD' CHARGE

A specially picked eight-man detective squad has been ordered to probe charges of former Toronto jail guard Gary Dassy that he belonged to a six-man "goon squad" who systematically beat prisoners.

The squad will be led by Inspector John Webster, former head of the Metro homicide squad and one of the department's top investigators.

Webster, who investigated allegations of corruption by two Toronto magistrates in 1983, will be assisted by Staff Sgt. John Lebourne of the Metro homicide squad. He graduated earlier this year with top honors from a Federal Bureau of Investigation course in Washington.

## Another ex-guard says inmates beaten at Don

Continued from page 1

like Millbrook, Burwash and Guelph, that the Toronto Jail is more or less "an education centre" for these guys. They were brought back to be "straightened out."

McClay recalled an incident when six young inmates, all under 21, were brought back from Guelph, where the guards couldn't handle them.

There were 14 or 15 of us guards waiting for them," he said. "They were taken aside... by the goon squad and beaten badly. I saw it."

McClay said one inmate,



BRUCE MCCLAY  
Job "oot my bag"

took him out and beat him

punched him... They never seem to hit or kick where you'd feel it."

Eventually the spoon was found, but in McClay's view the beating was "senseless" all they had to do was search.

On several occasions, McClay said, he witnessed beatings in the elevator while prisoners were being taken to "the hole" (solitary confinement).

Why didn't he come forward before with his charges?

"I was only 23-24 and I didn't think anyone would believe me," he said. "I signed some paper that

Section of Page 2 of the Toronto Star for October 2, 1974.

A. Two guards entered the dormitory and they told us, all the inmates in the dormitory, to line up against the wall.

MR. BYNOE. Do you know the names of . . . those two guards?

A. No, I don't sir. I was just about fast asleep when they came in. . . . I think there was about 15 additional guards that came into the dormitory. They took one chap out of the dormitory who was sleeping at the far end, a Negro fellow.

This was a reference to Fabian Vassell, and Martin went on to say that Vassell was "struck a few times". He was unable to say by which correctional officer.

Q. Where were the blows struck and what did you see, that's what I'd like to know.

A. I just saw him dragged and hit a few times . . . he was just pulled out of the bed. . . .

Q. How many guards grabbed him?

A. I believe there were two or three, sir.

Q. Two or three, and what did you see them do?

A. To the best of my recollection, here again I was very hazy as far as my view from this point is concerned. He was grabbed, he was hit a few times and just pushed out.

Q. What was he hit with?

A. Fists, sir.

Q. Was he lying on the bed when he was grabbed?

A. Yes, he was, sir.

Q. Was he pulled to his feet or what happened?

A. He was pulled right off the bed, sir.

Q. Did he land — where?

A. I presume he landed on his knees. It looked like he landed on his knees and he was just pulled right up.

Q. Pulled right up to his feet?

A. Yes, sir.

Q. All right.

A. And ushered right out of the dormitory. It happened very quickly.

Q. Just a moment. We have him coming off the bed and you think he went to his knees?

A. Yes, sir.

Q. And then you say he was pulled up to his feet?

A. Yes, sir.

Q. When was he struck and how was he struck and what was he struck with?

A. He was struck with fists, to the best of my recollection on this, sir.

Q. Where?

A. I presume, just from the angle we were at, looking down, he was just hit a few times as he was pulled out.

Q. Whereabouts?

A. I think he was hit on the side, sir. . . .

Q. Could you advise us how many persons struck blows?

A. That I cannot tell you, sir. There was approximately three guards grabbed him. I can't be definite on that.

As may be seen from the above, Martin's evidence was not the most definite. He had apparently just awakened and the events happened very quickly. It will be recalled from Vassell's evidence that he did not make any allegation of being struck while in 11 dormitory until, just outside the Commission inquiry room, he heard Martin make the statement that he (Vassell) had been struck (see Vassell allegation).

It would certainly appear to be rather injudicious for a correctional officer to strike an inmate in the presence of approximately 20 inmate witnesses. As Martin stated, he was "very hazy" about what had happened. It may well be that Vassell was handled in other than a gentle manner in being awakened and taken quickly out of the room.

After Vassell left the dormitory, Martin stated, the rest of the inmates were "ushered out to the smaller dormitory which is adjoining the large one". The large room was then subjected to a very thorough search. Martin referred to it as being "completely ripped apart from one end to the other . . . the beds were all turned upside down. Everything was pulled apart."

Q. Did they seem to be conducting a search?

A. They most certainly did, sir. One guard went in with what appeared to be a bent coat hanger and a large flashlight, one of those big lantern-type flashlights . . . and from what we could see he was looking down little cracks and crannies . . . in the floor and the walls.

Q. What happened after that?

A. This took approximately 10 or 15 minutes. We were out for quite a while. At that time I was ushered back into the dormitory by myself and the rest of the inmates were told to go out of the smaller dormitory, told to go downstairs, I presume.

Q. You then were taken from the smaller dormitory back into the larger dormitory?

A. Yes, sir.

Q. What was going on in the large dormitory at that time?

A. At that particular time when I went back in, there was one guard that asked me to come back in; there was approximately 15 guards in the inside of the dormitory. There was one particular sergeant who had in his hand a package of I believe pills of different types and colours and whatever else.

Martin said that he referred to one of the correctional officers as being a sergeant because he had "a white shirt on". He was unable to identify the "sergeant" from the book of photographs other than to place his age between 58 and 65, his weight 160 to 165, and his height 5'8" or 5'9". From other evidence, the sergeant in charge of the search was identified as C.O. 4 John Patterson and Martin's description fitted Patterson, to whom he also referred as having a Scottish accent and "a large boil on the side of his neck with a big bandage on it".



Martin stated that Patterson asked him if the package belonged to him.

A. And I said, "No, sir", at which time Mr. [C.O. 2 Charles] Casey said, "Don't lie to the sergeant," and I received two blows by Mr. Casey's right fist into my mid section, into my stomach.

Q. Was the sergeant there?

A. The sergeant was standing right next to him, sir.

Q. How far away would he have been?

A. He would have been approximately a foot and a half away from Mr. Casey.

Q. Were there a number of other guards in the vicinity?

A. Yes, there was. There would be approximately I would say anywhere from 10 to 15 guards surrounding him.

Q. And did they appear to be watching or were they going about their business?

A. They were watching exactly what was going on, sir.

Q. Watching you?

A. Yes, sir.

Q. All right. Now, then, you have indicated that you were punched in the stomach with a fist, is that it?

A. Yes, sir.

Q. Was that Mr. Casey's fist?

A. Yes, it was, sir.

Q. What can you tell us about the degree of force?

A. Mr. Casey made off with his fist and just gave me two powerful blows right in the stomach. By that time, I was slightly bent over. I am a pretty big fellow but it still hurt quite a bit.

Q. How tall are you?

A. I am six feet tall exactly, sir, and I weigh 225 pounds.

THE COMMISSIONER. Would that be your approximate weight at the time?

A. Yes, it would, sir.

MR. BYNOE. Now, then, you were punched in the stomach twice, is that right?

A. Yes, sir.

Q. What happened then?

A. I believe I made the statement to Mr. Casey, or I was directing it at Mr. Casey and also at the sergeant, "Honest to God, sir, I do not know about these pills, they are not mine."

Q. All right.

A. Mr. Casey stated again, "I told you not to lie to the sergeant" and at that time I received I believe it was four or five more blows in the stomach and he came down with his fist on the right-hand side of my neck very hard, at which I doubled right over.

This was not only an allegation against Casey personally, but an allegation that Martin, an inmate, was struck by a correctional officer in the presence of a senior officer. As has been stated elsewhere, this is a serious allegation for it is up to the senior officers to ensure the control of the line officers and to ensure that inmates are not physically assaulted.

One can understand the concern of the jail staff about the cache of drugs

that was found, but "third degree" methods should not be used. If Martin was suspected, then he should have been charged with a misconduct and a hearing held before the Superintendent.

Martin said that the effects of the blows were to give him a "very sore neck for a few days" and that he also had "a lot of pain" in his head.

Q. Did you go down to the ground?

A. I was down on my knees. I wasn't right down on the ground.

Q. During the time that you have described, did you at any time make any motion or threatening movements towards Mr. Casey?

A. I wouldn't dare, sir. If we had been alone, I don't know what I could have done. But, with that amount of guards in the room, there is no way I was going to. Not even talk back at him.

Q. Did you?

A. No, sir, most certainly I did not, sir.

Martin had earlier indicated that he was the only inmate at that time in the dormitory.

Q. All the others had been taken not only out of the dormitory you were in, but also had moved from the smaller dormitory, is that right?

A. Yes, they had, sir.

Q. At any time, did you see any inmate making any observations of what was going on in the dormitory?

A. Not at that time. No, I did not, sir.

Q. Did the sergeant who was present, did he do anything with respect to your person?

A. He did not, sir.

Q. Did he say anything to Mr. Casey?

A. He didn't say a word to Mr. Casey. He condoned the whole procedure as it was happening. . . . He just stood there and didn't say a word either way. . . .

Q. You didn't hear him say anything and you didn't see him do anything?

A. No, sir.

Martin was asked what occurred after that.

A. One of the guards in the background made a remark that "this is Walter Martin's son, the Judge". I believe it was the sergeant that said to me: "Is your father Walter Martin the Judge?"

Q. Now, before that remark was made . . . had you ceased being struck?

A. Yes, I had — it was — no, I beg your pardon. This was said, I believe, just prior to the last blow or just at the last blow that was being struck.

Q. All right. You have indicated that you heard a remark. What, if anything happened after that? Firstly, were you struck again?

A. No, sir. As soon as that remark was stated the sergeant asked me if —

Q. Just tell us what the sergeant said now.

A. He said: "Is your father the judge?" And I said: "Yes." This is because I thought it might have a bearing on the beating I was getting that it would be

stopped, terminated at that time.

THE COMMISSIONER. In point of fact, just to clarify the record, your father was not the judge.

A. No, he is not.

Q. He had a similar name?

A. That is right.

MR. BYNOE. Now, the remark was made and the sergeant then asked you if you were Judge Martin's son and you indicated you were.

A. Yes, sir.

Q. What happened then?

A. I received a lecture for about 60 seconds, approximately, on what a good man my father was.

Martin said he was then lectured about being involved with the drugs.

Q. You denied you had anything to do with the drugs?

A. Yes.

Q. Had you in fact anything to do with those drugs?

A. No, sir.

Following the events in the dormitory, where he was questioned in the absence of other inmates, Martin was escorted out of the dormitory by Casey who had a hold on his arm, and he recalled something Casey said to him during their journey towards the stairs: "I just can't say the exact words, but it was something to the effect that - 'You fell down the stairs, Martin.' "

Q. Was there anyone else present?

A. There was possibly a few guards behind him. There was a few guards in the hall. I can't recall exactly who was there, no, I can't.

Q. Would they have had an opportunity to hear that remark?

A. Most definitely, sir.

Q. And the remark was something to the effect of —

A. That I would infer the injuries I had received were by falling down the stairs in other words.

Q. What injuries?

A. These blows I had received inside of the dorm.

Q. Well, I don't quite understand that.

A. Well, I presume that after, when getting down the stairs, if anybody asked me if anything was wrong with me, is that I had received this by falling down the stairs in the jail.

During the inquiry there were other references to injuries supposedly received during falls down the stairs. In these, there was no prompting by the correctional staff, but alleged falls on the stairs were apparently intended to cover up injuries received in other ways.

Martin was taken down the stairs towards the rotunda.

A. I held on to the railing very tightly. I received two or three good pushes by

Mr. Casey.

Q. Where was he in relation to you?

A. Right behind me, sir. . . . His hand was right on the back of my shoulder.

Q. Was anything said?

A. "Get down the stairs." Or it was something to that effect. I was holding the railing going down for my dear life with one hand.

Q. Was he saying, other than to move or get down the stairway, did he say anything else?

A. Not to my recollection, sir, no.

Without deciding upon the validity of the allegation by Martin, technically speaking the placing of a hand on another person without his consent constitutes an assault in law. Although there was nothing serious as a result of this assault, the practice by correctional officers, if it does occur, is to be deprecated. An accident could happen, particularly if the pushing occurred on a stairway.

Martin said he was first taken to the reception cell opposite 8 landing. He was there for 15 or 20 minutes and was then taken to surgery.

Q. Had you made a request to go to the doctor?

A. Yes. I was doubled over at that particular time and my neck was hurting quite a bit. I think I might have explained to one of the guards that I had had a gall bladder operation and my stomach was hurting me quite a bit.

Q. So it was as a result of the request on your part that you were taken to the surgery?

A. I believe so, sir. It could be a combination of the guards wanting me to be examined and also a request by myself.

THE COMMISSIONER. When did you make that request?

A. When I was in this room, sir.

Q. It was not until you were in the reception room that you made the request?

A. Yes, sir.

As for the part Casey placed in the alleged assault on Martin, particularly in 11 dormitory, Martin picked Casey's photograph out of the book of photographs of the correctional staff.

MR. BYNOE. You have referred in your notation, after picking out this guard's photograph, as you say, he is the guard that actually assaulted you, is that correct?

A. Yes, sir, I will never forget him, ever.

Not only was the answer definite, but the manner in which Martin gave his evidence on this point was rather impressive. The combined effect was to indicate that there was no doubt in Martin's mind of the assault on him by Casey. This evidence was so definite that it could not help but shift the onus for the incident to Casey and also to require an explanation by Patterson, the senior officer present. This was the most impressive part of Martin's entire evidence.

In surgery Martin was seen by a nurse.

A. The guard who was standing there had taken me to the nurse's station, he was standing right next to me and I told her, I said – "I have been told that I fell down some stairs." Then I think at that time she examined me and looked at my pupils and said, "They are dilated, have you been on drugs?" I said the only drugs I have had are two pills that have been given to me by the doctor this afternoon for a headache. At that time, the nurse said that is why they are dilated or enlarged or whatever the case was. The guard left the room for a short period of time and I told the nurse, "I have been beaten and I am afraid to say anything with the guard present. My stomach is just killing me and the side of my neck is very, very sore." The nurse examined the side of my neck and she examined my stomach and she gave me a green liquid that tasted something like Milk of Magnesia. She said, "This will calm your stomach down" or something to that effect.

The nurses' register that was filed indicated that Martin had complained of a sore neck. It also had the notation, "fell down the stairs a few minutes ago, never used drugs, has high blood pressure". Following this there was a blood pressure reading and the word "Tetrex". There was also a notation, "Had a bad headache."

Martin said that the Tetrex had been given to him on an earlier occasion because of a bad case of bronchitis which he contracted in the Toronto Jail.

Martin's medical status summary indicated a complaint of bronchitis on April 6 and the prescribing of Tetracycline. There is, of course, some question as to whether the Frosst tablets which Martin said were prescribed by Dr. Dubelsten should have caused dilation of his pupils.

Q. Now then, you indicate that the nurse made a remark after looking at your pupils. Is that right?

A. Yes, sir.

Q. And then did anything else occur?

A. Yes, sir. She went on to explain to me that the guards were very upset, that they had just received a pair of high-heeled boots from an inmate, that they had just been extracting numerous amounts of pills with a pair of forceps from this inmate's heels in his boots and the guards were upset about this, and everybody was up in arms over it. . . . She let me stay there I presume for anywhere from 15 minutes to half an hour. She seemed very understanding with what was going on to a certain degree, and wanted me to relax as much as possible.

Martin said he was then taken to the Legal Aid room in the rotunda area. He said that the "sergeant" was the same one who had supervised the search.

A. I told the sergeant, I said honest to God, I had nothing to do with this and I don't know why I am being treated like this. I said I swear to you I do not know what's going on. I was talking to him, I presume about three or four minutes and he says well, Mr. Martin, he says, I am convinced to this point that



we will have to have an investigation to determine just what is going on here. . . . And I was given a pad of paper and a pencil and I was told to put down what had transpired in the dormitory.

A photocopy of Martin's handwritten statement of May 25, 1974, was entered as an exhibit.

Q. Would you kindly read that statement to us please, Mr. Martin?

A. Yes, sir. "I, Robert Martin, do swear this statement to be the whole truth so help me Almighty God. I started to serve my ten week intermittent sentence and for the first four weeks was labelled as a 'narc' or 'plant'." I might clarify that. A lot of inmates were getting at me that I look like a policeman, they thought I was a plant in the Don Jail. I do not know why and here again, just to clarify this one point —

Q. Just read it and then we will go through it.

A. "I have a father who is a judge and a brother-in-law who is head of the Oak Ridges, maximum security for the criminally insane in Penetang, Ontario. The fellows in the corridor at the Don Jail are all aware of this. Last Monday morning I took six of the inmates from the jail to breakfast because it was my thirtieth birthday and asked one of the fellows, a chap by the last name of Hiltz to put ten dollars in a fellow's account by the name of Gilbert Miner who works in the showers, and five dollars in another account of a fellow by the name of Jack who works in the kitchen to buy cigarettes for the fellows in our ward as it was to be my last weekend. Upon my arrival at the Don Jail I was informed by Gilbert and Jack that the fifteen dollars I had given this person to put this money in their account, he had not done so. A fellow who slept next to me by the name of . . . Brian Strickland gave me a cardboard box with extra tobacco in it, toothpaste, soap, cigarette papers and matches and asked if I would hand those out to the fellows as they needed them. I have not at any time tried to take in any pills into this jail so help me God, or any other items not allowed."

As can be seen from the above, during the reading of the statement there was an interpolation by way of attempted explanation by Martin. The most glaring error, of course, despite his protestation by way of solemn oath in the first sentence was to have alleged that he was the son of His Honour Judge Walter Martin. Prior to reading this statement before the Commission, Martin must have realized the position he was in, for he attempted to put forth some excuse.

Q. And is that the statement which you wrote out by hand in the Legal Aid office which you just told us about?

A. Yes, sir. I might add I just had my shorts and my T shirt on and no socks or shoes and my nerves were just completely gone with what had gone on. I was shaking and trembling and I was very, very cold.

This excuse could not in any way justify the attempt Martin made to pass himself off as a person he was not. As serious as the matter was, it became



even more so when one considered the nature of the oath at the opening of the statement. The result was that, despite Martin's imposing appearance of responsibility and respectability, all of his evidence had to be weighed carefully, and on the important matter of drugs one had also to look for any motivation that might have existed.

Martin came from a more privileged class than many of the inmates who were with him in 11 dormitory, at that time used exclusively for men serving intermittent sentences. Martin had access to more money than many of the other inmates in the dormitory. He felt a lack of acceptance, and this seemed to bother him. He therefore had a reason to curry favour with his fellow inmates. Whether this went as far as trafficking in drugs was, of course, the question for decision.

Martin added some further comment on his statement.

A. My last weekend in jail, my birthday is on the 23rd, and it was brought to my attention that you could get the little extras at the jail if you put some money in people's accounts that are on, I believe it is, remand, that have not been sentenced as yet, and they are allowed to buy cigarettes, cigars, magazines, etc., in the jail. I attempted to do this and the money never got into these accounts and I just lost the money on this . . . Brian Strickland, he was there during the week and he accumulated a large box — he only spent part of the weekend in there — of tobacco, extra toothpaste and what else have you on his bunk and he just turned it over and gave it to me, stuffed it under my pillow. It was open, the guards could see it any time they wanted to. It just held extra tobacco and what else have you in it and if any of the inmates ran short on tobacco or papers or matches they would just go over and help themselves. But I made this out in a very hurried fashion, I made it out very quickly, this statement.

THE COMMISSIONER. When you were writing this, was anyone else in the room with you?

A. No, there were not, sir. I was alone in that room for approximately two hours.

There was further elaboration by Martin in connection with money he gave to an inmate by the name of Hiltz to give to another inmate by the name of Miner.

A. On the Monday morning previous, when we were released from our detention, as soon as we got outside, our monies were handed back to us and I gave this fellow [Hiltz] the money and asked him, you know, he said he would put it in this fellow's account.

Q. Was he an inmate?

A. Yes, sir, to my knowledge he was, on an intermittent sentence.

Q. Was there any reason why he should put it in somebody else's account rather than you?

A. I did not have the time; I was working during the week and this chap said, you know, he lived a short distance from the Don Jail and, you know, he would put it in, providing he could have a few cigarettes.

Q. So that as far as you were concerned, the \$10 was to go to a man by the name of Miner, is that right?

A. Yes, sir.

Q. Who was he?

A. I believe he was working in the kitchen – I beg your pardon, not in the kitchen – he was working combination handing out spoons, cutlery and what else have you, and also in the shower room when you arrived at the jail.

Q. Would he be both in the area where you would be searched . . . and in the area where your clothes were, is that right?

A. Yes, sir.

Q. He would also have access to the dormitories?

A. Yes, sir.

Q. He would be a pretty good runner.

A. Yes, he would, sir.

Q. All right. Now then, the purpose of giving the money to him to give to Miner was what?

A. It was just to put into their account in the Toronto Don Jail so they could purchase cigarettes which were other than the pouches of tobacco that they gave you.

Q. What was he to do with it?

A. He was to take it to the office of the Toronto Don Jail.

Q. This is Mr. Hiltz, now?

A. Yes.

Q. He was to take it to the property office and deposit it in Mr. Miner's property bag?

A. Not into his bag, into his account. . . .

Q. And then Mr. Miner was to buy cigarettes, is that right?

A. Yes.

Q. What was Mr. Miner to do with the cigarettes?

A. Turn them over to me the last weekend I was in jail.

Q. So he would deliver them to you?

A. Yes, sir.

Q. And you were an intermittent prisoner?

A. Yes.

Q. And were not permitted under the rules and regulations of the jail to purchase cigarettes, is that right?

A. Yes, sir.

Q. So I guess that would fall into the category of contraband?

A. I presume so, sir.

Q. Now, then, was he to buy \$10 worth of cigarettes?

A. Yes. The deal was that for every package he bought for me, he kept one for himself.

Q. So you were to get \$5 worth?

A. Yes.

Q. Could he buy that many packages at one time at the Toronto Jail?

A. I have no idea, sir.

It can be seen from the above that Martin was a manipulator, keeping

himself in the background and using his money for others to take risks which he personally wished to avoid.

Q. Where had you met Mr. Miner?

A. He used to bring up to this Brian Strickland, he used to bring him up grilled cheese sandwiches, little extras of the jail from the kitchen, orange crystals so you could mix yourself a glass of orange juice instead of drinking the water there all day long and Brian, in turn, before he went out of there on the weekends, all this extra stuff, you know, he used to give to me that this Gilbert [Miner] would bring – I presume – I think Brian left on the Saturday and then on Saturday and Sunday I would get some little extras of the Don Jail which would be a grilled cheese sandwich or a bacon sandwich or something of this nature.

Q. Would that also be paid for by part of the \$5?

A. No.

Martin's "wheeling and dealing" was inquired into further.

Q. Were you then trading the cigarettes off for cheese sandwiches and that sort of thing? I just don't quite understand ——

A. The cigarettes I bought, it was my last weekend in the jail, O.K., and I bought them strictly for the fellows.

Q. You were giving them away?

A. I was giving them away. All of the inmates in there, as I received a package of cigarettes I just opened the whole thing and passed it right around to the whole dormitory and it was gone in two minutes, the whole package.

Q. Yes.

A. And the grilled cheese sandwiches that I received from – what's the chap's name again –

Q. Miner?

A. Gilbert Miner, they were just turned over to me after Brian Strickland had left. This was the fellow that was getting them before. When he left they were turned over to me.

Q. You took Strickland's place with respect to these grilled cheese sandwiches?

A. My bunk was right next to his, exactly.

Martin also attempted to gain favour with inmates by taking them out to breakfast when they were released from the intermittent sentences on the Monday morning prior to the incident in 11 dormitory.

Martin was questioned about his misconduct hearing before Assistant Superintendent Mulhern.

MR. BYNOE. Well now, when you sat down with Mr. Mulhern, what was said by Mr. Mulhern to you?

A. I do not think I could remember word for word, but I think the gist of the conversation was that they had found numerous amounts of drugs in the dormitory. I think that he mentioned that some of it was found in a pair of

shoes that I owned that were in the dormitory. I do not know if he said shoes or the dormitory. That he had conducted a thorough investigation and to this point everything was against me; and that unless I could come up with some information to defend myself that he would have no option but to take the proper steps involved in his investigation.

Q. Did Mr. Mulhern not advise you that it was alleged that a search of the 11 Dormitory revealed that, hidden between the leather soles of your shoes, there were two pills of unexplained origin?

A. It is quite possible, sir, it is quite possible. I took those particular shoes down to the Ministry and also had them examined by the *Toronto Star* because one sole had been ripped right off and the other had not been touched. They said there was some drugs in there. I cannot understand why they would rip one sole off, when it was an old pair of shoes that were glued together on a few occasions because they were coming apart, and they would not rip the other sole off of the other shoe.

Martin was charged with having in his possession an unauthorized article. The details, over the signature of Patterson, were: "Search of 11 dormitory revealed that hidden between the leather sole of the subject's shoes were two pills of unexplained origin."

Part 2, signed by McNeight, read as follows: "While supervising search in 11 dorm I examined Martin's shoes in the presence of Mr. Stafford C.O. 2 and found 2 yellow pills in a slot in the sole of one [of] the shoes. I then placed him in 3B seg. Martin denied knowledge of the pills." Part 2 was witnessed by Casey and Stafford as well as by Patterson.

Part 3, over the signature of Mr. Mulhern, read: "Denies any knowledge of pills found in his possession. Inmate claims tobacco etc., given to him by inmate Brian Strickland (intermittent)."

Part 4 indicated that Mr. Mulhern found Martin guilty of the misconduct. The penalty, and comments, were: "Forfeit 10 days statutory remission to be served consecutively and intermittently to any term now being served. . . . COMMENTS: The right to call witnesses on his behalf was waived by the inmate."

As a result of a complaint Martin made to the Ministry of Correctional Services an investigation was made for the Ministry by Inspector M. V. Villeneuve.

Pages 2 and 3 of Mr. Villeneuve's report are reproduced on pages 510 and 511.

The report included photographs of Vassell's shoes, and of the "glued soles with cavity" of Martin's shoes. Attached to the report were statements by inmates Martin, Bible, Miner, Hiltz, and Richardson, and correctional officers Patterson, Stafford, J. B. Brown, and Casey.

Accompanying the report was a memorandum from S. Teggart, director of the Inspection and Standards Branch, to G. R. Thompson, who at that time was Assistant Deputy Minister and who later became the Deputy Minister. The relevant part of the memorandum, dated June 13, 1974, reads:

Two basic complaints are contained; one, that he was wrongly accused of



No. Complaint by inmate R. M. Martin of  
being improperly treated while incarcerated  
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#### INVESTIGATION - RE CONTRABAND:

On May 25, 1974, Mr. J. Patterson, C.O.4, received information from inmate Brian Biele to the effect that there were pills hidden in all dormitory which houses the intermittent sentences, (Att. # 3 & 4 - statements of Mr. Patterson and inmate Biele). Inmate Biele further went on to explain where the pills were hidden and stated inmate Martin had brought them into the jail.

A complete search of the dormitory was subsequently made and pills were found in the following locations within the dormitory:

- (1) Two pills were located in the heel of inmate Florian Vassel's shoe (Att. #5 - photo of shoe).
- (2) Two pills were located in the sole of inmate Robert Martin's shoe (Att. #6 - Photo of shoe).
- (3) Three pills were located in a glass case owned by inmate George Morris.
- (4) 11 pills were located hidden in a crack in the wall, wrapped in a piece of toilet paper.

The pills were identified by the medical staff as being Valium and Valium. Inmates Vassel and Morris admitted the pills found in their possession were in fact their property, but inmate Martin denied any knowledge of the pills. The three inmates were subsequently charged with being in their possession contraband (Att. #7). No owner could be located for the 11 pills found wrapped in the toilet paper.

#### RESULT OF DISCONTACT:

Following an investigation and hearing by Assistant Superintendent E. Mulhern, all inmates were found guilty of the misconduct. Inmates Martin and Morris were to forfeit 10 days Statutory Remission. Inmate Vassel had no statutory remission so he was to serve the balance of his intermittent sentence in close confinement. An investigation revealed the three inmates had been fairly and properly dealt with.

#### COMPLAINT OF ASSAULT:

Inmate Martin, in his statement, states that during the being questioned about the pills by Mr. Patterson, C.O.4, and Mr. Stafford, C.O.2, he was punched three times in the stomach and once on the side of the neck by Mr. Stafford. He further advised he gave this information to Dr. Dublestein when he (Martin) was examined. A check of the medical status summary (Att. #8), reveals inmate Martin did complain to Dr. Dublestein, but no visible signs of injury could be found.

Re: Complaint by Inmate R. M. Martin of  
 being improperly treated while incarcerated  
 at the Toronto Jail  
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A check with Mr. Patterson revealed he saw nobody strike inmate Martin, although inmate Martin was in a room out of Mr. Patterson's sight for a few minutes, and when Martin returned, he appeared to have a stiff neck. Subsequently, Mr. Patterson brought inmate Martin to the Medical Department for examination. (Att. #8). Mr. Patterson did not see who was with Martin at this time as he (Patterson) was busy with inmate Vessel.

Mr. Stafford denies striking inmate Martin and also stated nobody in his presence struck inmate Martin (Att. #9). Attempts to find out who was with inmate Martin during the period of time when Mr. Patterson was busy with inmate Vessel were unsuccessful. Inmate Martin insists he was struck by Mr. Stafford in the presence of Mr. Patterson, although both Mr. Patterson and Mr. Stafford deny this allegation.

#### ADDITIONAL ATTEMPTS TO OBTAIN CONTRADICTORY:

During the search of 11 Dormitory, a box containing tobacco, cigarettes, cigars, chewing gum and orange drink crystals were located under inmate Martin's pillow. Inmate Martin advised it was not his property but he was just keeping it for the other inmates in the dormitory.

Investigation revealed that on the weekend of May 11, 1974, inmate Gilbert Minor, who works in the shower area was given \$10.00 by inmate Martin on the latter's return on Friday evening to serve his sentence (Att. #10). The money was to be placed into Minor's account and he was to buy cigarettes for Martin. Inmate Minor, at this time, was a sentenced and not a released inmate, so he was entitled to purchase cigarettes; Martin, being a sentenced inmate, was not. For each package of cigarettes Minor purchased for Martin, he was entitled to purchase a package for himself. Inmate Minor, after taking the money, became frightened and turned it in as a contraband. (Att. #11) - Statement of Mr. Brown.

On May 20, 1974, inmate Ronald Hiltz, was given \$10.00 by Martin. (Att. #12). He was to put \$10.00 into the account of inmate Minor and \$5.00 into the account of inmate J. Richardson. Hiltz attempted to do this, but was unsuccessful, so spent the money himself. A check with inmate J. Richardson revealed he worked in the kitchen and was supplying a few white grille crust sandwiches to inmate Martin and other inmates in 11 Dormitory (Att. #13). This is probably how the orange drink crystals came to be in 11 Dormitory, although Richardson denies this. Richardson also advised he knew nothing of the money Martin attempted to put into his account.

It appears that inmate Martin was a manipulator and knew how to use the other inmates to his own advantage. He also knew how and he would try and impress the other inmates with, on the occasion of bringing approximately ten inmates out for breakfast on his thirteenth birthday.



having contraband concealed in his shoes; two, that he was assaulted by Correctional Officer W. Stafford while being questioned about the contraband found.

Copies of Inspector Villeneuve's investigation report are attached, which leave no doubt that Martin was a manipulator who attempted to use the system to his advantage, and when caught, pleaded both innocent and ignorance to jail procedures.

I find it very difficult to accept Martin's explanation that he was framed, and that someone planted the contraband in his shoes. Investigation revealed that the drugs (pills) found in the soles of his personally owned shoes had been carefully concealed, prior to admittance. The sole had been removed or separated and cavity made in which the pills were placed prior to the sole being cemented back in its original position. This made it absolutely impossible for staff to detect the contraband while examining shoes on admission. However, since the drugs were placed in a cavity near the outer edge of the sole of Martin's shoe, they could be easily retrieved once within the jail without removing the entire sole.

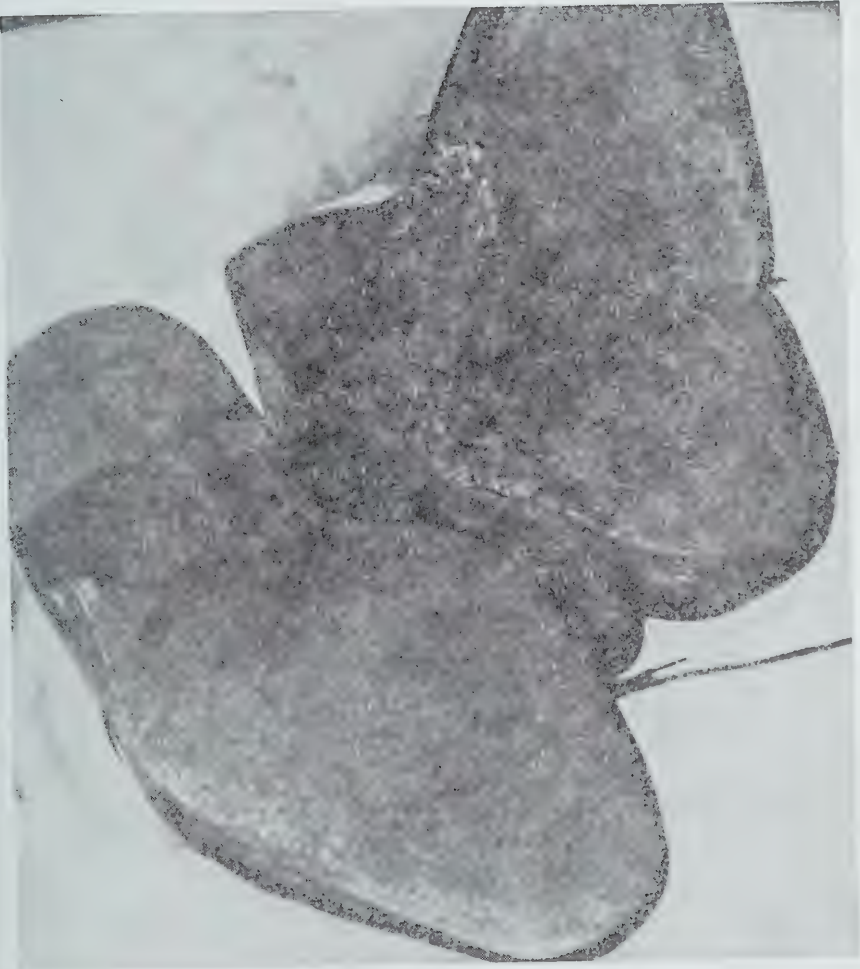
Martin's allegation that he was assaulted by C.O. 2 Stafford, in the presence of Mr. Patterson (C.O. 4), cannot be substantiated and was denied by both Officers. Mr. Patterson admits that he left the room briefly, while Mr. Stafford was talking to the inmate. He also admits that inmate Martin appeared to have a stiff neck shortly after being questioned by Mr. Stafford, and that he personally escorted the inmate to be examined by the jail physician. Dr. Dubelsten examined inmate Martin, however, [and] could find no visible signs of injury.

In view of the foregoing, and the information contained in the attached report, there is little doubt inmate Martin was guilty of having contraband (drugs) concealed in his shoes at the Toronto Jail. He had attempted to influence other inmates to make purchases and provide extra privileges through his offers of money to be deposited to their accounts. Under the circumstances it would appear that inmate Martin was fairly dealt with by Toronto Jail administration.

Martin, in his statement attached to Mr. Villeneuve's report, described himself as "Mr. Nice Guy". He referred to one of the correctional officers who entered the 11 dormitory as a "big fellow, who has a moustache and goes anywhere between 250 to 300 pounds". He alleged that it was this correctional officer who assaulted him. In the original complaint and investigation he referred to this correctional officer as Stafford. At the Commission hearing he positively identified this correctional officer as Casey.

The statement of inmate Bible was most damning to Martin's case. He related that Martin (referred to as "Bob") had asked him for a spoon; and then:

When he got the spoon, he started taking apart his shoe and as he was doing that I said, "What are you doing?" and he said to Brian, the guy that sleeps beside him, "I have got some more." When he got the pills out of his shoe, they were in a plastic bag and then I said, "What are they?" and he said back to



*Shoes brought into the jail by Richard Martin, showing glued soles with cavity.*

me, "They're pills, what did you think they were," and I said, "Well I know that they're pills, but what kind are they?" and he did not answer me, so I waited to see what he was going to do with them, and then he said to Brian, "I have 150 this time," and I said, "Wow, is that a lot of pills," and he said, "That is nothing, I brought over 200 pills in last week," and then he took 10 pills out and put them in an empty toothpaste box and then said to Brian, "These are for us," and, just after that, the guard came to the bars with a lot of things in which he said to Bob, "These are for you," and Bob said, "From you?" and the guard said, "From an inmate on the other side, he said he owed you them," and Bob said, "Can I speak to him?" and the guard said, "I will send him right over and you can straighten it out with him." When the guy came over to the bars, the guard was not around and Bob said, "How were the last ones?" and he replied, "Oh, they were great," then he gave Bob two books, two or three packets of cigars, three packets of Daily Mail tobacco and two packets of Export Plain and two packets of Export A, and Bob gave 140 pills to Brian who gave them to the guy at the bars.

The statement of Patterson indicated that the search was a result of information received from inmate Brian Bible. It described Bible as a "trouble-maker and unreliable". It mentioned that two five-gram Valium pills had been found in Vassell's boot and went on to say: "Bible also claimed that Robert Henry, who was admitted to St. Mike's, had received some of these pills and overdosed. Ron [sic] Martin had two yellow pills in a slot in the soles of his shoes."

The statement of Patterson was dated May 25, and was intended for the Superintendent or for Mr. Mulhern. It was still thought, at that time, that Martin was a son of His Honour Judge Walter Martin. "Martin, who is Judge Walter Martin's son, claims the pills were planted on him to make a patsy out of him on account of his father."

Patterson gave a separate statement to Mr. Villeneuve, indicating that Stafford was with Patterson when Martin was spoken to and that this occurred in the rotunda and not in 11 dormitory. Patterson stated:

[Bible] told me to look in Ron Martin's shoe and he didn't know the name of the coloured guy, but to look in his boot. I went over there and gathered up my officers and we did get the stuff where Bible said. Plus, we got a few in the hole in the wall. Morris had some in his glasses case and there were some in the sole of Martin's shoe. He had the hole cemented together, there appeared to be a cavity in the sole. All the inmates were frisked, then they were removed down to 10 corridor. I had Martin brought down to the dome and Mr. Stafford was with me. I questioned him about the pills and he denied all knowledge. He said, "It's a plant." Then he seemed pretty genuine, so I said, "Martin, if you have nothing to conceal, put it in writing," which Martin did. Martin seemed to have some trouble with his neck so I brought him into the surgery and tried to get the two nurses, Kendrew and Cabon, to identify the pills. I asked him, "What was wrong with your neck?" and he said, "Nothing sir."

Stafford and Casey, in their statements, denied striking Martin. Stafford

stated that when he arrived at 11 dormitory for the search Casey was already there. Stafford said it was he (Stafford) who woke up Vassell and got him out of bed and that he was also the one who found drugs in the heel of one of Vassell's boots. He then took the boots to surgery and with the help of a pair of tweezers removed the Valium tablets. He returned to the dormitory and told Patterson what had been found in the boots. He also stated, "We found a brown shoe with a split sole and a cavity to put drugs in. Martin was removed from the dormitory after Sergeant Patterson questioned him."

From their statements, Stafford and Casey were apparently both present while Martin was being questioned about his shoe while still in 11 dormitory.

In his evidence, Martin attempted to explain when and why he had glued the sole of one of his shoes. In the light of all the evidence, I find any innocent explanation unacceptable and I have no alternative but to find that the pills in the sole of Martin's shoe were smuggled into the Toronto Jail by Martin.

As for any assault that may have been committed on him, Martin said that, during one of three interviews with Mr. Mulhern, "I'm pretty sure I told Mr. Mulhern that I was hit, that I had been beaten."

At his medical examination on May 26 by Dr. Dubelsten, Martin claimed to have been beaten by correctional officers the previous night. It was further indicated that there was a claim of injury over the posterior neck and abdomen. Dr. Dubelsten's report was "mild torticollis [bent neck]—no visible marks of injury over neck and abdomen".

Martin said he did not name any particular correctional officer in his allegation to Dr. Dubelsten because "I didn't know their names." Further with reference to the medical examination, there was the following evidence.

MR. BYNOE. Do you agree that when you were examined there were no visible marks of injury on your neck and abdomen?

A. With the exception of my neck being red. It was red when I returned home on the Monday morning on the side of my neck.

Q. Did the doctor advise you of the results of his examination?

A. He said he could find nothing externally wrong with me. He didn't think there were any internal injuries.

Q. And the medication that was prescribed, did he tell you what it was for?

A. He told me, I believe, it was a sedative.

Q. To calm you down?

A. To calm me down. My nerves were just completely gone.

As to the motivation behind Martin's complaint, this was discussed at the hearing. Martin stated that Mr. Mulhern had told him of the evidence against him on the contraband charge.

A. If I didn't come up with any evidence to dispute these charges against me . . . I was going to lose some good time as they call it and . . . I would have to spend two and a half weekends more in the institution. And, if I did not show up . . . a warrant would be put out for my arrest for being unlawfully at large. I asked Mr. Mulhern at that time, and I told him, I just can't believe what is happening and if there is anybody I can go to about this that I can talk to about it, and



he advised me my only course would be to see the Deputy Minister for Correctional Services.

Q. Well, you were concerned about the loss of your good time, is that what you are referring to?

A. I was concerned with what had happened to me at that institution and from every —

Q. Just a moment. What did that include?

A. The main thing I was concerned about is me being hit and it being covered up to the point where nobody would admit to it and nothing was being done about it. This was my main concern.

Q. How were you able to ascertain that no one had admitted to it?

A. I presume that because nothing had been done about it, absolutely nothing.

Q. Now then, is there anything else that you were complaining about?

A. No, sir.

Martin indicated that Mr. Mulhern was helpful with reference to the procedure that he should adopt as to any complaint. Martin then asked if it was possible for him not to be returned to segregation, and Mr. Mulhern had him returned to 11 dormitory. He said that, after being in the dormitory for about an hour by himself, he was placed elsewhere in the jail. He said that while he was in the dormitory alone, Casey came over and gave him a cigarette. He referred to Casey as being "the guard that I pointed out earlier" and he also identified him in the hearing room while giving this evidence.

THE COMMISSIONER. In your subsequent conversation with Mr. Casey when he said that everything pointed towards you, that would mean in connection with bringing drugs into that part of the jail I would presume.

A. I would presume so, sir.

Q. But aside from that was there any discussion at that time between Mr. Casey and yourself about your allegations of assault?

A. Absolutely none, sir.

Q. He did not mention anything and you did not?

A. Neither one of us brought the matter up.

Martin stated that he voiced his concern about drugs in the jail to his probation officer. "I was telling my probation officer that I don't think that an intermittent sentence was a good thing for anybody involved in drugs because it doesn't act as a deterrent for them in any way, shape, or form. They are using it during the week and they are in there on the weekend using it and they are out peddling it on Monday morning. It just seemed a big farce to me, that is all."

Martin denied having taken drugs at any time other than on prescription from his family doctor. It was his estimate that over half of the intermittent inmates were in the jail because of drug offences. On the matter of whether he had complained to Mr. Mulhern of assault:

MR. BYNOE. Is it fair to say, Mr. Martin . . . that as far as Mr. Mulhern was concerned you were worried about the allegations that you had contraband in

your possession, to wit the pills, and that is what you were concerned about and the possibility of loss of your good time?

A. From the beginning Mr. Mulhern was basically telling me that this is what had been found in my belongings up in the dormitory, and was asking me to defend myself, to which I did not have any defence. When I was told by Mr. Mulhern that I had to spend two and a half more weekends in the Toronto Jail I just could not believe this.

Q. What I am trying to get at – was the general tenor of the conversation and the remarks directed to the charge that was against you about pills there, or was there really any conversation whatsoever about the fact that you were assaulted? That is what we are trying to get at.

A. I do not think it was really brought to light. Mr. Mulhern was doing most of the interviewing most of the time, he was going over basically what he had conducted in his investigations.

Q. Now having had time to think about it, is your recollection any more clear now as to whether or not you told Mr. Mulhern that there was a white shirt present when you were assaulted by the guard?

A. I cannot recall, I cannot recall.

In any event, by the time the matter was referred to Mr. Villeneuve, it was definitely known that an allegation of assault was being made by Martin and this matter was covered in questions put to Stafford and Casey by Mr. Villeneuve.

As for the promptness of the investigation:

A. I was very fortunate, the Deputy Minister went to great ends to try and get the investigation completed as soon as possible before the weekend arrived.

Q. I gather from the time you had seen the Deputy Minister until the weekend you were still under the impression that you would have to return to the Toronto Jail to serve an additional two weekends. Is that correct?

A. Yes.

Q. Now then, when and how was it that you came to be in touch with the *Toronto Star*?

A. This was when Mr. Dassy, I presume, when his article appeared in the paper. I figured that nothing had been done on my appeal and I contacted the *Toronto Star* myself and voluntarily gave them the information.

Martin's discussion with the *Toronto Star* took place after publication of the articles concerning the allegations of Gary Dassy, and this was in the fall of 1974.

Concerning Mr. Villeneuve's investigation, Martin said:

I was told by him that he had completed the investigation and that he would determine that I was justly dealt with and that in fact I would have to spend these two and a half weekends in jail.

My request, which I was very grateful to him and I still am regardless of what his findings were, which I did not agree with. I was allowed to spend these two and a half weekends in the Whitby County Jail where I worked in



the kitchen. . . .

I think the Department of Correctional Services themselves did all they could do under the circumstances, or obtained all the information that they could obtain. I think I was treated quite well down at the Department of Correctional Services.

Martin was questioned by the Commissioner about his shoes.

THE COMMISSIONER. Had you ever repaired your shoes yourself before?

A. No, never, never in my life. . . . I would just buy new ones. I never had shoes repaired, not to my knowledge. I have never taken them in and had soles put on or heels or anything.

Martin then went on to voice his theory.

A. I think the guards planted the drugs in the shoe, either that or one of the inmates, while I was sleeping that afternoon, with my headache, in bed, put something in there. It is one of the two things, if in fact the drugs were in this shoe.

THE COMMISSIONER. Where were your shoes when you were sleeping?

A. They were underneath the bunk.

Q. Could other people have access to them?

A. Oh yes, they were there, because I had a migraine headache. I had received medication from the doctor and I was in bed, I was almost fast asleep when the guards came up and pulled me out of there. All I had was my shorts and my T-shirt.

Q. Were any of the inmates that were in that dormitory people that you did not relate to, so they might have done something like that to you?

A. I can't answer that question, I don't know, I don't think so, at least I hope not. I did my share of the work in the jail.

In a slightly more humorous vein, Martin said that he had no objections to sending his shoes to the Commission offices and then followed this up with a statement that they were no longer available.

THE COMMISSIONER. Mr. Martin, you have mentioned several times about observing these shoes. Have you any objections to sending them to the Commission Offices?

A. None whatsoever. I checked with my wife last night and I said, I think they might require these and she said, Bobby, we threw them out before we moved, if you recall. I said, damn, they just might need them.

In view of the other evidence, I find the suggestion that the drugs were planted by any of the correctional officers wholly unacceptable; nor can I accept the claim that the pills were planted by another inmate. I therefore conclude that the allegations were nothing more than a continued attempt by Martin to divert suspicion from himself.

**Martin was cross-examined by Mr. Carter.**

**MR. CARTER.** After you had been there a couple of weeks you realized you were able to keep with you in the dormitory your shoes?

**A.** If you wanted to, yes. . . . I kept my own shoes the entire time in the jail.

**Mr. Carter also questioned Martin about Miner.**

**Q.** Well he actually worked with the clothing, didn't he? He was given clothing, civilian clothing and he was assisting in the issuing of the jail issued clothing, wasn't he?

**A.** Yes, but still working around the shower room, too.

**Q.** But you knew from your going in on weekends that he was the person actually working with the clothing, wasn't he?

**A.** To my knowledge, yes. I presume so.

**Q.** And of course it would be very helpful to have a contact or helper on your side in the clothing area if you wanted to bring something into the jail, wouldn't it?

**A.** It never entered my mind, sir.

**Q.** I see. Just a coincidence that he works in the clothing area and you are trying to arrange to have \$10 credited to his account. Is that what you are telling me?

**A.** That is right.

**There was also questioning about inmate Jack Richardson.**

**Q.** He worked in the kitchen, didn't he?

**A.** I believe he did, yes.

**Q.** You knew he did?

**A.** I believe he did, I do not know for sure.

**Q.** He would be the person bringing up the extras from the kitchen, wouldn't he?

**A.** Some of them, yes.

**Q.** And you were not having \$5 credited to his account in return for favours that he brought you from the kitchen?

**A.** No, strictly to try to get some cigarettes for us, that is all. . . .

**Q.** Then I take it it is just again a coincidence that you are trying to have \$5 credited to the man who has been working in the kitchen, and who was bringing up the odd favour?

**A.** That is correct, exactly correct.

**Q.** So then we have the two simultaneous coincidences, is that correct?

**A.** That is right.

As to whether Martin complained to Mr. Mulhern that he had been struck by an officer, on cross-examination Martin admitted that he was seen by Mr. Mulhern on two occasions.

**Q.** Now, you have said that – I was not sure – did you tell Mr. Mulhern that

you had been struck by any officer?

A. I might have, sir. I don't know. Mr. Mulhern was pretty well carrying the conversation and just explained to me pretty well that he had launched an investigation.

The implication was that unless he had been asked about it by Mr. Mulhern he would not have the occasion to tell him. It is difficult to understand this, for, if the assault was as serious as he was later alleging, one would have expected that he would have complained to the Assistant Superintendent whether he had been asked about it or not.

The segregation log book showed a visit with Mr. Mulhern on Sunday, May 26, from 12:27 to 12:50 p.m. At 1:00 a male nurse, Lauwers, visited Martin and there is the notation "no complaints". Dr. Dubelsten's records, however, indicated a complaint by Martin that he had been assaulted. Martin said that he also told the nurse but there was no record in the nurses' log of a complaint. The nurses' log book is primarily concerned with nursing problems, and, even with reference to these, it is not a very complete summary. It could, therefore, be that a complaint was made to the nurse and not entered. As will be seen from the evidence of Nurse Kendrew (set out later in this allegation), her recollection of her conversation with Martin fell short of mentioning any serious incident.

Mr. Carter brought out the fact that the complaint to the doctor was made after Martin realized the difficulty facing him with reference to the charge.

Q. All right. You say you received these blows somewhere about six or seven o'clock on the evening of the 25th. . . . It appears you saw Dr. Dubelsten some time between 1:20 and 1:42 on the afternoon of May 26th.

A. Presumably, yes, sir.

Q. At that time, you say your neck was still red?

A. Yes, it was, sir.

Q. Were there any other bruises or marks on your stomach or anything of that nature?

A. No, there weren't.

Q. Not at all?

A. No, there weren't.

Q. Did any show up?

A. No.

Q. Never had a bruise on your stomach?

A. No, sir.

Q. How long did it take before the redness in your neck went away?

A. It was still there on the Monday, and I think it disappeared on the Tuesday or Wednesday of that week.

Q. You disagree, then, with Dr. Dubelsten's notation of no visible marks?

A. Yes, sir. That mark was there on the Monday when I went home.

At this point, it is advisable to consider briefly the evidence of Dr. Dubelsten in connection with the Martin incident. He stated that he saw Martin on Saturday, May 25, before 11 a.m. He explained the reference in

the medical summary to "NC", meaning no complaints, and he said that he wrote this down as a result of information given to him by Martin. "Then he said he had a frontal headache."

Dr. Dubelsten indicated that quite often he prescribed two Frosst 217s and, Martin having advised that he had received some, the doctor admitted that this was possible. These would have been taken by the inmate in the doctor's presence. Asked whether two 217s taken before one o'clock in the afternoon would have any effect on the pupils at 6:38 to 7:00 p.m. in the evening, the doctor's answer was "absolutely no". He said the 217s would not affect the pupils.

Dr. Dubelsten said that he examined Martin and found that there was a mild muscle spasm of the neck but that there were no visible marks of injury over the neck or abdomen. He said he was talking in terms of bruises or skin abrasions, for which he had specifically looked. He also said that he prescribed a muscle relaxant and analgesic.

There is a direct conflict between his evidence and that of Martin. Dr. Dubelsten gave evidence on several occasions and where he was referring to notes made of examinations I have at all times found him to be both fair and factually accurate. I therefore accept his evidence that at the time of his examination on Sunday, May 26, he looked for and found no visible marks of injury on Martin's neck or abdomen. This was not a routine examination but was specifically related to the complaint by Martin that he was "beaten up by correctional officers" and a further complaint that he sustained injury "over posterior neck and abdomen". Further, the fact that Dr. Dubelsten found "mild torticollis", which is a mild bent neck, indicated that he paid attention to the neck during the examination.

Since Martin was living and working out of Ontario at the time he gave evidence, and to save him the inconvenience of returning at a later date, the procedure was adopted of placing before him the projected evidence of other witnesses. Some of these witnesses were inmates who had been interviewed by Mr. Villeneuve. The exception was Brian Strickland. His proposed evidence was put to Martin on the basis of a statement obtained from the Commission investigators.

It was indicated that as many of these witnesses as could be brought before the Commission would in fact be heard *viva voce*, and therefore, aside from Martin's comments, there would be an opportunity to compare the consistency of the statements as put by Mr. Carter with the *viva voce* evidence.

Mr. Carter questioned Martin about the projected evidence of Brian Bible.

Q. On the Friday of that weekend [Bible] indicates that he was sitting on your bed talking and you asked to see a spoon that another inmate had. Do you recall that?

A. No, I do not, sir. A spoon?

Q. A spoon.

A. No, I do not, sir.

Q. He said when you got the spoon you started taking apart your shoe.



A. No, sir.

Q. That's not true?

A. No, it is not, sir.

Q. He asked what you were doing, and you said to Brian, the guy that sleeps beside you, which I take to be Brian Strickland, "I've got some more." Did you say that?

A. No, I did not, sir.

Q. He then says, "When he got the pills out of the shoe they were in a plastic bag. And then I said, 'What are they?' And he [Martin] said back to me, 'They are pills, what did you think they were?'" Did you say that?

A. No, I did not, sir.

Q. "And I said, 'Well, I know they are pills, but what kind are they?'" Was that said to you?

A. No, it was not, sir.

Q. "And he [Martin] didn't answer me so I waited to see what he was going to do with them. And then he said to Brian, 'I have 150 this time.'" Did you say that?

A. I did not, sir.

Q. And I said, "Wow, is that a lot of pills." Was that said to you?

A. No, it was not, sir.

Q. "And he [Martin] said 'That is nothing. I brought over 200 pills in last week.'" Did you say that?

A. No, I most certainly did not, sir.

Q. "And then he took 10 pills out and put them in an empty toothpaste box." Did you do that?

A. Not to my recollection. I can't recall any part of this conversation or the individual, because it didn't happen.

Q. It didn't happen or you don't recall it?

A. It didn't happen, period.

Q. All right. "And then he said to Brian 'These are for us.'" Did you say that?

A. No, I did not, sir.

Q. "And just after that the guard came to the bars with a lot of things and which he said to Bob [Martin] 'These are for you' and Bob said, 'For me?' and the guard said 'From an inmate on the other side. He said he owed you them.' And Bob said, 'Can I speak to him?' And the guard said, 'I will send him right over and you can straighten it out with him.'" "

I will continue on so we will know what we are talking about:

"When the guy came over to the bars, the guard was not around and Bob said, 'How were the last ones?' and he replied, 'Oh, they were great.' Then he gave Bob two books, two or three packets of cigars, three packets of Daily Mail tobacco, two packets of Export Plain and two packets of Export A and Bob gave 140 pills to Brian who gave them to the guy at the bars." Now, did that occur?

A. No, it did not to a point. There were some magazines brought over to the dormitory on the Friday evening which were passed around frequently by the fellows in the adjoining dormitory, for us to read. . . .

Q. Was there ever any occasion when a guard brought you some articles from



a person on the other side, which I take it would be in the corridor?

A. Not to my knowledge, sir. . . .

Q. Did any other inmate come and give you cigars, cigarettes and magazines?

A. To my knowledge, we were handed — I should say I was, I will just verify that — handed a package of Rapier cigars which are long cigars and two packages of cigarettes, one were Camels or something, I guess, and I just gave them to another inmate to smoke them. . . .

Q. Were these given to you by an inmate?

A. Yes, they were, sir, I don't recall —

Q. Who was it?

A. I think it might have been Jack [Richardson] . . . I believe Jack had purchased some cigarettes during the week and some cigars and put them through, and gave them to us. A lot of the fellows who are in there on intermittent sentence, whether they smoke or not, they buy cigarettes and cigars just to give to the other inmates, even though they don't smoke, just so there is an extra flow of them in the jail.

Q. Did the transaction described in this statement of Mr. Bible take place?

A. It most certainly did not, sir.

THE COMMISSIONER. Except for the parts that you have indicated?

A. Yes, the cigarettes and the newspapers, I think there were a couple of *Playboy* magazines. . . .

Q. All right, with respect to the pills, did that take place?

A. It most certainly did not, sir.

Q. Did you at any time remove pills from the sole of your shoe?

A. I most certainly did not, sir.

Q. And if Mr. Bible says that you did, that is an outright lie?

A. It most certainly is, sir.

Q. All right. Do you know of any reason why he would make up a lie like that about you?

A. Not off-hand. I know there is quite a few individuals who were involved in the distribution of drugs throughout the jail and I indicated to Mr. Villeneuve when I went down to see him the week after this weekend when this incident happened, I did not mention any names at this time, that in fact I had heard, and you cannot help hearing what is going on in that place, that there was a quantity of speed and acid in the kitchen of the Don Jail and further to my discussion with Mr. Villeneuve at the duration of that week, he indicated to me that they had conducted a thorough search of the kitchen and literally torn it apart and had come up with nothing.

Q. So that would be your explanation for why he would make up these things?

A. Unless I am forced to name the individuals, there was trafficking in the jail where drugs were brought from one part of the jail to the other part of the jail and distributed; that I know about and have seen.

Q. But Mr. Bible would have no grievance against you?

A. Not to my knowledge, no.

Q. Did you at any time ever have as many as 150 or 200 pills in your possession in the Toronto Jail?

A. No, sir, I did not.

Q. You did not, so if Mr. Bible said that, that again is a complete fabrication?

A. That is correct, sir.

Martin was then questioned by the Commissioner about the carton that had been referred to as being used to hold certain community property.

THE COMMISSIONER. If there were pills being distributed, would they be in this box at all?

A. There was never any pills or anything in that box. There were drugs floating around but I would not have anything to do with them, no way.

Q. They would be hidden?

A. They would be concealed and hidden somewhere, most definitely.

From the above, it would indicate that if Martin had drugs he would not keep them in the open very long and he also realized the necessity for concealment. Although this might be evidence referable to the space in the sole of his shoe where drugs could be concealed, the statement by Martin as to concealment was not necessary in order to come to a conclusion that he did use the sole of his shoe for bringing contraband into the jail. There is ample evidence to this effect, both factual and inferential, without having to rely on his statement about drugs being concealed and hidden. In fact, according to Martin, he had never heard of the use of a shoe for this purpose until after the event on the weekend of May 25-26.

Mr. Carter continued to question Martin about Bible's statement.

MR. CARTER. Did you on any occasion give 140 pills to Brian Strickland who gave them to someone on the other side of the bars?

A. I did not, sir.

Q. So we have the three separate, three different statements by Mr. Bible, which are completely false – your bringing the drugs in in your shoe; your having 150 or 200 pills in your possession; and your giving 140 to Brian Strickland to give to a person at the bars, is that correct?

A. As far as I am concerned, sir, they are completely false.

Mr. Carter then questioned Martin on his statement that Vassell was struck while in 11 dormitory by the correctional staff.

Q. And I suggest to you that Mr. Vassell indicates that when he was taken from his bunk he was not struck.

A. Mr. Vassell was struck. I don't think he was in a condition at the time to realize what was happening to him.

Q. Why was that?

A. Because he was high all weekend on drugs.

Q. He was high on drugs?

A. That's correct, sir. . . . It was the contention of all the inmates that he was just stoned right out of his mind on drugs.

Q. Is that your explanation for why he wouldn't know he was struck?

A. That's the explanation that was sort of a general feeling of the inmates in the dormitory.

Mr. Carter then referred to the statement Brian Joseph Strickland gave to the Commission investigators.

Q. Then with respect to Mr. Strickland, he was the person who was on the bunk next to you and whose bunk you took over on Saturday; is that correct?

A. Yes, sir.

Q. Now my information is he was interviewed in February of 1975, and it indicates that on one occasion he passed from you to an unknown inmate a bundle of Valium.

A. No, sir, that's not correct.

Q. It's not correct?

A. No it's not, sir.

Q. So we have Mr. Strickland saying on one occasion that he passed over to an unknown inmate a bundle of Valium. We have Mr. Bible saying that Mr. Strickland did that. And you say it didn't occur.

A. That's correct, sir. . . .

Q. He also says, "Bob had a pair of shoes which had the sole loosened so he could smuggle in pills and things. He would glue the sole of his shoe together with contact cement. Everyone in the dormitory knew this. I have actually seen Bob take pills out of his shoe."

A. No, sir, that is not correct. It was common knowledge that the guards had ripped the sole off a shoe on a Sunday evening and what had happened. I was told this by the inmates.

Q. So Mr. Strickland then is fabricating that statement?

A. Yes, he is, sir.

Q. All right. That is the same – in essence that is the same statement that Mr. Bible has made; is that correct?

A. Yes, sir. And if I can make a statement at this time: As far as the drugs in the dormitory were concerned, I am just defending myself on this part of it, that Mr. Miner with his ability and freedom of the jail – at the time I did not mention any names to Mr. Villeneuve, but I did indicate that I had heard that there was a lot of speed and acid in the kitchen. These drugs were distributed in the jail by Mr. Miner. Okay? And Mr. Strickland was one of the recipients of these drugs.

Q. Mr. Miner was distributing drugs?

A. That is correct, sir. . . .

Q. This is the same Mr. Miner you tried to have \$10 put into his account?

A. That's correct, sir.

Q. I see. For cigarettes?

A. That's correct, sir.

From the above may be seen the problem that the correctional staff had in attempting to control drugs in the Toronto Jail. This trafficking is not particular or singular to the Toronto Jail but is one of the problems encountered in many penal institutions.

Mr. Carter further referred to Strickland's statement.

Q. Mr. Strickland also says, "The pills I took from Bob were downers, yellow in colour, with a potency of 5 ROCH. I've seen 200 pills at one time." I presume

he is referring to 200 pills in your possession at one time. Is that also false?

A. That's false, sir.

Q. So with respect to these three items, the shoe being taken apart, the finding of pills in it, the passing of pills to another inmate by Mr. Strickland and the 200 pills being in your possession at one time – both of these inmates have at different points in time made up the same lie?

A. Okay.

Q. Is that correct?

A. To my knowledge, my feelings on it are that they are trying to conceal their movements in the jail, that's all.

Q. How could they both say the same thing at different times?

A. I have no idea. This report was taken when? This year?

Q. Yes.

A. Okay. I haven't talked to Mr. Strickland or Mr. Miner since this incident happened. Maybe they contacted each other. I have no way of ascertaining this.

With reference to the statement of Brian Strickland, Martin was asked some further questions by the Commissioner.

THE COMMISSIONER. There is one other thing Mr. Strickland said that I would like to hear your comment on, Mr. Martin. He said that you used to smuggle money and pills into the dormitory.

A. No, sir, on no occasion.

Q. And he stated on some occasions when you gave out this Valium, "He had most of the inmates in the dormitory around his bed." . . . Then he says, "On one occasion I passed over from Bob to an unknown inmate a bundle of Valium."

A. No, sir, that is not correct.

Q. Another statement: "He asked me if I wanted any and on one occasion I used a couple."

A. Not to my knowledge. I haven't seen him high on drugs, and I never gave him any.

Q. Did you ask him if he wanted any?

A. No, I most certainly did not. I didn't have any, sir.

Q. Then he says, "Bob had a pair of shoes which had the sole loosened so he could smuggle in pills and things."

A. No, sir. . . .

Q. That is what he says.

A. I realize that.

Q. That you had a pair of shoes that had the sole loosened. "He could smuggle in pills and things. He would glue the sole of his shoes together with contact cement. Everyone in the dormitory knew this. I have actually seen Bob take pills out of his shoe."

A. No, sir, that is not correct.

There was a further discussion with Martin about procedure and the purpose of questioning him about the drugs.

THE COMMISSIONER. Before Mr. Carter goes on to some other statement – from



the two you have heard there are definite contradictions between that evidence and yours.

A. Right, Your Honour. My contention on this matter is, there was one big drug ring going on in that jail at the time I was there. I was concerned about this this morning to the degree if I should mention the names of these individuals and I had a brief discussion with Sergeant Crease.

Q. One of the Commission investigators?

A. Yes, sir. I was just concerned the way the questioning was going yesterday as if I am set up for something as far as drugs were concerned.

Q. You are not being set up for anything.

A. No, you know what I was talking about and it was sort of confirmed in the statements coming out now that I am being fingered as the individual responsible for this.

Q. Mr. Martin, if I can explain to you the reason you are being asked these questions, what we are concerned with in this investigation is not the existence of a drug ring in the Toronto Jail. That may come into some other aspect of the inquiry in connection with the duties of correctional officers, but at the moment we are concerned with your allegation of an assault that you allege had been made upon you.

A. Yes, sir.

Q. And the assault you allege occurred as a result of someone saying that you brought drugs into the jail and you say you did not.

A. No, I did not, sir.

Q. I understand. If you had brought drugs into the jail it still might not justify the assault but the matter goes to credibility of your evidence. If your evidence is not credible on one issue it will probably be argued on behalf of Mr. Carter that therefore your evidence should not be given credence on the other issue of the assault.

A. I realize that, sir.

In Martin's *viva voce* evidence he specifically excluded Stafford as the one who assaulted him as he had originally claimed in the statement given to Mr. Villeneuve. This is just another example of identity discrepancies that came up from time to time in the hearing.

The statement of Ronald Hiltz was put to Martin and again there were contradictions. Martin denied that he told Hiltz that the \$15 he was giving to him to put in the accounts of two other inmates was to pay off a hockey wager debt. There were also some other statements of Hiltz's that Martin either did not recall or disagreed with.

Martin was asked whether the \$15 he gave Hiltz was the only money that he ever attempted to have credited to Miner's or Richardson's accounts and he stated that this was so. He was then referred to Miner's statement that Martin had handed him "ten bucks" in the dormitory. Martin stated that it would not be possible to bring money into the jail dormitory. He was then advised that Miner turned over the \$10 to C.O. 2 Herbert Hogg.

MR. CARTER. I am just going to suggest to you that it is a fact and it will be established that Mr. Miner did turn in \$10 with the report that you had handed it to him.



A. Well, that part is incorrect. He might have had \$10, but he didn't get it from me.

Q. So what you are saying then is, Mr. Miner handed in \$10 to the jail officers, but he didn't get it from you, it was his own money, he was just throwing away?

A. Wherever he got it from, he didn't get it from me, sir. I can't tell you if it was his own money he was throwing away. You are making the statement, sir. But he didn't get it from me.

Q. He is lying when he says in his statement that he got it from you, and he would be lying to the jail officials when he gave it to them saying that he got it from you?

A. As far as I am concerned, he is, sir. . . .

Martin stated that Miner and Richardson were in the Toronto Jail on different occasions.

Q. So on one occasion Mr. Richardson told you that he would buy something for you if you put money in his account and on a separate occasion Mr. Miner indicated that if you put money in his account he would buy cigarettes for you?

A. Yes, this was open to the inmates, whoever wanted to try to get money into the account.

Q. But really you wouldn't tell Miner that you were putting money in Richardson's account and you wouldn't tell Richardson that you were putting money in Miner's account?

A. Oh, yes, I told them. It was discussed that money was going in, that \$10 was going to try and be put in Gilbert's account while I was talking to Jack and vice versa.

Q. Why?

A. Why not?

Q. Why would you tell them that?

A. Why not? You know, I'm hoping, okay we could have maybe seven packs of cigarettes there for the weekend. There wasn't too many of the other inmates that had any money to do this with on the outside. Most of the fellows in there were in there on dope charges. . . .

Q. These [Miner and Richardson] are two people that had general access around the jail?

A. Exactly.

Q. One to the kitchen and one in the clothing area?

A. That's right.

Q. The one in the clothing area was a person known to be a drug trafficker?

A. Yes, sir.

Q. A person that you were attempting to arrange to get money to?

A. Yes, sir.

Q. And a person who could be very helpful to you if you were attempting to smuggle drugs into the jail?

A. I wouldn't attempt to smuggle drugs into the jail, sir. It never occurred to me.

Martin's evidence has been dealt with rather fully because it posed the

problem of weighing the credibility of a respectable businessman who had made an allegation of assault to one of the newspapers, which gave it headline publicity. A similar allegation had been made in a letter to the Deputy Minister of Correctional Services. The allegation was a particularly serious one because it implied an assault in the presence of a senior officer.

## EVIDENCE OF BRIAN BIBLE

This inmate was 18 years of age. He had attained a Grade X education but his reading was at a Grade III level, he said.

On the weekend of Saturday, May 25, 1974, he was serving an intermittent sentence. He had been convicted the day before for possession of a stolen automobile and sentenced to 60 days, to be served intermittently, plus probation for a 12-month period. On February 20 he had received a 30-day sentence for failing to comply with probation provisions.

On May 25 he was in 11 dormitory. At some time in the afternoon, C.O. 2 Charles Casey came in and asked whether he wanted to see a "white shirt". He then went down to the rotunda. When C.O. 4 John Patterson came, Casey told him (Bible) to stand up and, Bible said, when he stood up Casey hit him in the stomach with his fist. "I went back and hit the wall and sat on the bench again." He said that the force of the blow was "pretty hard".

Bible said he was taken to see a "white shirt" because he had asked a correctional officer to see one. He could not recall the correctional officer to whom he had made the request.

Bible said there was nothing he did that would have justified the blow. He denied that he had used obscenity to the correctional officers, as alleged by Casey. "Then he [Casey] told me to stand up and I was talking to the white shirt. So I stood up and at the same time I was standing up, he said, so you like telling the guard, or something like that, you like telling the guards to [deletion], so he hit me in the stomach."

The correctional officer he is alleged to have said this to was C.O. 2 Robert Driscoll, according to what Bible says Casey told him. When Driscoll was questioned about the matter, he said that it was quite possible the statement was addressed to him by Bible, but that he did not recollect it.

Bible said that Patterson was two to two and a half feet away from him when Casey struck him and that he (Patterson) did not say anything.

MR. BYNOE. According to you is there any possibility that Mr. Patterson could not and did not see Mr. Casey strike you?

A: No.

If this did occur, as alleged by Bible, then the seriousness of the matter

was compounded by a line officer believing that his assault would be acquiesced in by a senior officer, and by a senior officer taking no disciplinary action against the line officer. This would further indicate that, on the same day, if the allegations of Robert Martin and Brian Bible were correct, not once but on two separate occasions Casey struck an inmate in the presence of Patterson and no action was taken by Patterson. If this was so, it was inexcusable. Senior staff should be able to control and discipline line officers and the line officers should have enough respect for the senior staff that they do not place them in the embarrassing position of having either to condone an assault or take action against a line officer.

Bible said that Casey also grabbed hold of him by the hair and gave a couple more punches with his fist to the face and the side of the head. He described these as "fairly hard punches". By "fairly", he said, he meant that it was not as hard as he thought Casey could punch. He said the effect was pain and that he went to the ground on a couple of occasions and that he was struck "a lot". He said Patterson could see the subsequent blows.

Bible said he was then taken over to the landing outside Corridors 7 and 8, Casey still pulling him by his hair. Another correctional officer came over and took his left arm and they went down the stairs towards the basement corridors.

Q. Did anything happen to you going downstairs?

A. Not really. Mr. Casey was hitting me a bit but not much.

Bible continued with his allegations.

Q. As the elevator doors opened, you say, Mr. Casey gave you a punch in the stomach; is that right?

A. Yes.

Q. With what?

A. With his fist.

Q. How hard was it?

A. Very hard.

Q. What effect did it have on you then?

A. I went to my knees.

Q. Were you inside the elevator at that time or still outside?

A. Outside.

Q. Up to that stage had the other man, whoever he was, struck you?

A. Not yet, no.

Q. All right. Now then, you were on your knees and you say the elevator door opened?

A. Yes.

Q. Was there anyone in the elevator?

A. No.

Q. What happened after that?

A. Mr. Casey and the other guy threw me in the elevator.

Q. Right. And were you standing up when you went in the elevator?

- A. I was on the floor.
- Q. That was as a result of what?
- A. Of the punch in the stomach.
- Q. When you say you were thrown into the elevator, were you picked up —
- A. Yes. They just took my arms and pushed me and sort of threw me in.
- Q. So you remained on the floor; is that right?
- A. I remained on the floor.
- Q. What happened when you got in the elevator?
- A. They both started kicking me.
- Q. Now, up to that stage, were you able to identify the other man with Mr. Casey?
- A. I never looked at him.
- Q. Was he a guard?
- A. He was. He was a big one but I can't tell you any more than that.
- Q. Do you know what colour shirt he was wearing?
- A. I imagine it would be grey. . . .
- Q. You were on the floor; you were being kicked by both of these men?
- A. Yes.
- Q. Do you know, can you advise us, firstly, how many times you were kicked?
- A. Well, three times by each person.
- Q. All right. Where were you kicked? What part of your body?
- A. I got one kick in the side of the head. All the rest were in my chest and stomach.
- Q. What was your attitude, physical attitude, at that time?
- A. I didn't say nothing. . . .
- Q. Whereabouts about your face were you kicked?
- A. I was kicked this side of the head [indicating].
- Q. You are indicating the right temple area?
- A. Yes.
- Q. Right. Do you know who kicked you there?
- A. No.
- Q. Well now, you were kicked also on the front part of your body you indicated?
- A. Yes.
- Q. Whereabouts?
- A. In the chest and stomach.
- Q. Can you tell us where Mr. Casey kicked you as opposed to where the other fellow kicked you?
- A. Well, I was watching Mr. Casey and he hit me twice in the stomach.
- Q. How hard were the blows, can you tell us that?
- A. Pretty hard.
- Q. What effect did they seem to have on you?
- A. It was hurting me.
- Q. Now then, what happened after you were kicked in the elevator? Was the elevator moving at the time or stopped?

A. It was.

Q. It was moving?

A. Yes.

Bible continued his narrative.

Q. What is the next thing you remember? Can you remember anything about baby doll pyjamas?

A. Yes. We went to put them on. Mr. Casey – I think it was Mr. Casey – I'm not sure which guy it was – hit me in the stomach.

Q. Hit you in the stomach. What happened as a result of that blow?

A. I went to the ground.

Q. Where were you then?

A. Just outside the cells in segregation. . . . I had the baby dolls over my head.

Q. Is that when you were in the act of putting them over your head?

A. Yes. I couldn't see who hit me because I had them over my head.

Q. Well then, what happened after that?

A. One of the guards grabbed my hair and smashed my head against the wall. . . . I just put my hands over my head. I was covering my face at the same time. I had a couple more blows.

Q. Keep your voice up. Do you know from whom?

A. Mr. Casey at that time. The other guard wasn't around, he stood back.

Q. The blows were from Mr. Casey. And what did he hit you with?

A. Just his hands.

Q. Opened or closed?

A. Closed.

Q. You mean a fist, is that what you are indicating?

A. Yes.

Q. The blows, where did they land?

A. To the side of my head and to my ribs. . . .

Q. The left side, okay. Was anything said to you at this time?

A. Yes. He said not to say anything about what happened.

Q. Do you remember the exact words?

A. I can't but it was a threat. . . .

Q. In your own mind what was going to happen if you did? What was the threat?

A. I was going to get a worse punching out. . . .

THE COMMISSIONER. Is that what they said, or is that what you assumed?

A. That's what I assumed.

MR. BYNOE. The only thing he said was, you are not to say anything about it?

A. Yes, but he said – I can't remember his exact words – but it was in that manner.

Q. That was what you thought he meant by it?

A. Yes. . . . I think I can remember the words he said now. . . . He said, "Nothing is to be said about this, all right?" and I said, "Right," and he said, "Better be," – or something like that – and give me a couple of more kicks.

Q. Where?

A. In the head.



Q. Were you standing or sitting?

A. I was sitting. I was laying down.

Q. Whereabouts?

A. In the hole.

Bible said that he had told Casey "lots of times", commencing in the rotunda, that he had not used obscenity to Driscoll.

The segregation records indicated that Bible was admitted to 3B segregation at 3:04 p.m. Bible said that he at first sat there "keeping my mouth shut" and he indicated also that he was crying. Later, at about six or seven o'clock, he spoke to one of the correctional officers and asked to see a "white shirt". An entry in the log at 5:12 p.m. indicated that C.O. 2 Dwight Sleigh was on duty and visited the area and that Bible was in cell 5 "walking around crying and talking to himself".

Bible was asked why he was crying and he answered, "From the punches I got and the kicks and the pain and because there was no reason for me to be there and I was depressed."

He said that the first correctional officer he spoke to would not let him see a "white shirt" but that the second one did and he saw the senior officer some 10 or 15 minutes later.

He did not tell the first correctional officer why he wanted to see a senior officer but he told the second one that he wanted to see the "white shirt" for the purpose of telling him about drugs.

Of course any request by an inmate in segregation to see a senior officer should be reported to a senior officer. If the line officer in segregation can ascertain why the inmate wishes to see the senior officer he should obtain this information, but if he cannot, then the matter should still be reported to a senior officer and it should be entered into the log that a certain inmate has requested to see a senior officer and this has been relayed either to the senior officer or to the Chief's office. It may be that the first correctional officer did relay the message but the senior officer in the area was engaged elsewhere. At any rate, a record in the log would protect the line officer and might even explain why the senior officer did not immediately attend.

Bible identified C.O. 2 Thomas Turnbull as the one who "could have been . . . helping Mr. Casey . . . when he was beating me up".

He said the "white shirt" who attended was Patterson. "I told him that there was some drugs in the jail and told him where they were, everything about them."

Q. And did you mention any names?

A. I did, in a way. I knew first names, I knew a little bit of their names, and I sort of described the people and he said, oh yes, I know him, and so on and so forth.

The segregation log indicates that at 7:25 Bible was released from segregation, and he said he went to either 2 or 3 annex.

There was an entry showing that Patterson was in the segregation area at 6:25 with reference to the medication of another inmate, but there was no

entry, as there should have been, showing the time of his interview with Bible.

Bible was shown the statement he gave to Mr. Villeneuve, in which he made certain allegations against Martin and upon which Martin was questioned.

Q. In the statement that you gave, was it the truth?

A. Yes.

Bible was asked about the drugs taken from Martin's shoe.

Q. Did you see Mr. Martin . . . take anything out of his shoe?

A. Yes, I did.

Q. Were they pills?

A. They were.

Q. Were they in a plastic bag?

A. Yes.

Q. Did you see Mr. Martin pass over pills to Brian Strickland?

A. Yes.

Q. Did you see Brian Strickland pass them to another man?

A. Yes.

THE COMMISSIONER. Do you know how it was possible, Mr. Bible, for Mr. Martin to get so many pills in the opening in his shoe?

A. It was between the sole. like the sole came apart and he had it put in between there, and he would glue it. So when he came in he took off his shoes and banged them and they would come out because they were glued.

Q. Yes.

A. When he got there, that's when he took it apart.

Q. But the number he had in the sole of his shoe was a large number.

A. They were very small.

Although Bible was in segregation, and the evidence indicated that Casey's complaint was that he had been using foul language against a correctional officer, there was no Misconduct Report on Bible on file at the Toronto Jail. As mentioned elsewhere in this report, Misconduct Reports should be kept on file, even where charges are dismissed.

As to Bible's leaving 11 dormitory with Casey, there was the following additional evidence on this point.

MR. BYNOE. . . . I want you to take your mind back to 11 dorm on May the 25th of last year. Do you know why you were taken out? Was any reason given to you?

A. No reason was given to me.

Q. It is just that you had asked initially to see a white shirt?

A. Yes.

Q. And then you say Mr. Casey came in and asked if you were the one that wanted to see a white shirt, is that correct?

A. Well, I asked him, I was sitting on my bed and I can't remember the exact

words but I asked him if I could see a white shirt.

Q. I understood you had asked someone else before to see a white shirt and then Mr. Casey came in and asked you if you wanted to see a white shirt. Is that right, or is the second version right?

A. I think it was me asking him.

Q. You asked him. Was Mr. Casey in 11 dormitory at that time?

A. He was. He was walking around making a check.

Q. I see. So he was just in there on other duties, and you asked him if you could see a white shirt and then he took you down into the dome and then brought over Mr. Patterson?

A. Yes. . . .

THE COMMISSIONER. What was the reason that you wanted to see a white shirt at that time?

A. To tell them about the drugs that were in the jail.

Q. Why did you want to do that?

A. I don't use them, I don't like them, and I have had my sister, at eight years old, someone tried to give her some of that . . .

Q. And ever since that time you – what was it you said?

A. Ever since then I have always had I guess a grudge against people using them because I would tell them if they had them.

Bible said that when he was first taken down to the rotunda by Casey he was not given an opportunity to tell Patterson about the drugs.

A. Mr. Casey walked over to Mr. Patterson. He stood talking for about 15 or 20 seconds, and then he came over to me and that is when he told me to stand up and started punching me. I did not have a chance to say nothing or to do anything. So what I took it, he told him that I swore at the guard and that was the reason why I was going down there. That is what I took from it anyway.

THE COMMISSIONER. Did you hear Mr. Patterson say that you were to be taken to the segregation cells?

A. No.

Q. As you were going off and out of the dome, did you know where you were going?

A. No, I did not.

Q. Did you think that you were going to go back to 11 dorm?

A. I did until I started heading down the stairs and I thought, where are we going.

Q. As you were leaving the dome you did not call to Mr. Patterson to tell him that there was something important that you wanted to speak to him about?

A. No, I did not.

Q. Even though that is the reason that you were taken down to the dome?

A. Yes, I did not say anything to him.

Q. It sort of strikes me as a bit odd and I wonder if you can explain why. If you go down to the dome, apparently to speak to a white shirt about a matter that is concerning you, then when you see him you don't tell him anything about this, either while he is there or as you were being led out. Does it not strike you as a bit odd, now that you look back at it?

A. Now that I look back, yes. I don't know why I did not say anything but I just did not.

In answer to questioning by Mr. Salem, Bible indicated that this was his first weekend in 11 dormitory and therefore the first time that he was aware of drugs in the dormitory.

As for the possibility of retribution for telling on the inmates:

MR. SALEM. When you had decided to tell the white shirt about these drugs, were you concerned about your own safety?

A. A little bit. Not much.

Q. Why was that? Didn't you think if the inmates found out that you had told the white shirt about their participation that they would try to get even with you?

A. Yes, but I can handle myself.

Q. You figured you could — if they tried it —

A. They'd regret it.

Q. Did that ever happen to you?

A. No. . . . I did get in one fight in the jail.

Q. I assume you won?

A. Well, no. The guards broke it up.

Q. In any event it wasn't until you got in the segregation that you requested to see a white shirt and you in fact said to one of the guards why you wanted to see him?

A. Yes, that was the guard in the segregation room.

Q. Right. And at that time, as you told us, you were depressed; you were in pain, and part of the reason why you were depressed is that it was unfair that you were there in the first place?

A. Right.

Q. Right. I guess it crossed your mind, of course, when you told the white shirt about the drugs that there would be a pretty — well, a better than even chance you would get out of segregation?

A. When the white shirt came down, the first thing I told him, I says, "I do know a thing about the drugs" but I didn't say anything to a guard. I wouldn't tell him about the drugs until he understood that I didn't say that to the guard.

Q. You didn't swear at the guards, you mean?

A. That is right.

Q. Did you make it clear to the white shirt you talked to, if you did tell him this information you wanted out?

A. I think I did, yes.

Q. Did you also make it clear, or did you request, that you weren't to be placed back in 11 dorm?

A. I don't think so.

Q. In any event, whatever you requested, the white shirt, as you recall it, agreed?

A. Certainly.

Q. And if he hadn't you wouldn't have said anything?

A. I don't know. I wouldn't have unless he did.

As for conversation with the other inmates about drugs in 11 dormitory.

A. I just asked him how he got them in and this, that and the other, you know, all about them and "Weren't you scared getting them in?" and things like that, and seeing if anybody else brought any in.

Q. You were talking to them to help you get information to tell the white shirt? Was that your purpose?

A. Yes.

Q. So that you never told them that you were against drugs or that you were going to tell?

A. No, I didn't. I did tell Bob. I was on the bed right beside him.

Q. What did you tell Bob?

A. He asked me if I wanted some.

Q. Yes.

A. And he asked the other guys that, you know, that were friends with him, like that – he tried to make friends with them, you know. Anybody that was nice to him he gave some to.

Q. What did you say when he asked you if you wanted some?

A. "No thank you."

Q. And that was it?

A. Yes. He did ask me why. "Are you sure?" you know, that is all I said, "I don't do them."

Bible was also asked whether he complained of the assault to Patterson and his evidence in this regard was rather weak.

A. I mentioned it in a fast way, in one sentence. I said I was taken downstairs and beat up and I didn't even say nothing to a guard. I said I was accused and that's why I am here and I shouldn't be here.

THE COMMISSIONER. And did Sergeant Patterson say anything about what you are alleging, about being beaten up?

A. No, I just made it clear to him that I didn't say it to the guard and he left. He said he would get me out.

It was also brought out by Mr. Carter that no complaint was made to Mr. Mulhern.

Reference was made to a statement of May 26 in Bible's handwriting.

MR. CARTER. When you wrote out this statement on May 26 in your own handwriting, which was shown to you earlier, I take it that the events that you were relating in this statement were clear and fresh in your mind; is that correct?

A. They were.

Q. All right. And how did it come about that you wrote out this statement?

A. A man called me in, and I think it was the man sitting there.

Q. Mr. Mulhern?



A. Yes. And he asked me what happened while I was taken to the hole.

Q. Did you tell him?

A. Yes, I did.

Q. What did you tell him?

A. I told him what I was supposed to have told this guard, used foul language, and I didn't.

Q. All right.

A. So I said, so I wrote down the story.

Q. Did you tell anything else to Mr. Mulhern at that time?

A. Only what's on the paper.

Q. Only what's on the paper. You didn't tell Mr. Mulhern anything about anybody striking you?

A. I don't think I did.

Q. Or being kicked?

A. I don't think so.

One cannot help but conclude that Bible's allegations of assault were exaggerated. This matter was brought out in another way in the examination by Mr. Carter.

Q. Now what marks were there on your body?

A. I don't think there was any except one bruise on my head.

Q. A bruise on your head. So you were punched about nine or 10 times to the head and there was one bruise; is that right?

A. One bruise.

Q. And you were punched about 15 times in the body and there's not a mark left; is that what you are telling us?

A. Yes.

Q. And you were kicked on all these numerous occasions, both in the head and in the body by an officer wearing the standard jail shoe boots, and there were no marks on your body at all?

A. I don't bruise very easy.

Q. You don't bruise very easy. All right. You were examined by the doctor a week after this, weren't you?

A. I was.

Q. And there wasn't a mark on you, was there?

A. No.

Once again, it would have been of assistance if a medical examination had been made before Bible went into segregation and immediately upon his release. As has been mentioned, this procedure has now been changed.

Mr. Carter brought out in examination that, according to the segregation log, the first time there was a request to see a "white shirt" was at 5:12 p.m. The second request was at 5:40 and a "white shirt" was seen by Bible at 6:25.

One matter that has been dealt with elsewhere, and comes up again in view of the allegations made by Bible of being assaulted while being escorted to segregation, is the necessity to have a senior correctional officer accompany an inmate to segregation and remain there until the inmate is in his cell.

## EVIDENCE OF BRIAN JOSEPH STRICKLAND

This witness was 19 at the time of giving evidence and 18 when he was in 11 dormitory during the Robert Martin incident.

In January 1974 he was convicted of improper possession of property over the value of \$200 and sentenced to 90 days, to be served intermittently. He was also placed on probation for one year.

Strickland stated that he was serving his intermittent sentence from Thursday at 1:00 a.m. to noon on Saturdays.

He identified various persons who were mentioned in the Martin incident. He said he had not known Martin before he went to the Toronto Jail.

His bed was the first one inside the door, to the right, and Martin's was right beside his.

MR. BYNOE. What sort of personal relationship did Mr. Martin seem to have with the other inmates?

A. He seemed to be — they seemed to get along, a lot of them.

Q. What if anything can you tell us about Mr. Martin's conduct when he was in number 11 dormitory?

A. He is a wheeler-dealer; loud mouth.

Q. Well, did you at any time see any transactions or did you see him at any time have any money in his possession in number 11 dormitory?

A. Yes, I did.

Q. Do you know —

A. Ten dollar bill. . . .

Q. As an intermittent prisoner are you permitted to have a \$10 bill or any monies in your possession in the dormitory?

A. No, sir. Not that I know of.

Q. Now could you see by any chance what Mr. Martin did with the \$10?

A. No, he just flashed it and shoved it in his pocket. . . .

Q. At any time did you see any pills in number 11 dormitory?

A. Yes, sir.

Q. Would you advise His Honour where you saw them? In whose possession?

A. I saw Bob Martin take them out of the bottom of his shoe. Right or left, I am sorry —

THE COMMISSIONER. Well, I guess it would have to be one or the other.

A. Yes. I am sorry. The right shoe; peel it back and take a little weeny bag, ziplock. I saw 200 pills at one time.

Q. Did he take 200 pills out?

A. Yes, sir. Just peeled this back. He took out a bag with 200 pills.

Strickland was shown a photograph showing the bottom of a pair of shoes that were identified as belonging to Martin.

A. . . . that was the shoe that he peeled back, just the side here [indicating]. Just peeled it back and reached in and pulled it out.

Q. Why did you run your hand from the portion of the toe down to the

narrow portion to the end of the arch?

A. That is where he had the pills, right in here. Sitting right in here.

Q. . . . Did there seem to be some kind of a depression in that or hollowing out of the shoe in that area or was it just flat?

A. No idea. I just seen him pull the shoe back and take it out. . . .

THE COMMISSIONER. Was it just one shoe that was used?

A. Yes.

MR. BYNOE. Now then, at any time did you see Mr. Martin handle any pills physically?

A. Yes, I did.

Q. Would you describe that to us, and where.

A. You want me to describe how he took the pills out?

Q. Yes, go ahead, and where he took the pills out?

A. Yes. "I got pills. I got pills, guys." Everybody rushed over and, "Give me two. Give me three." And he would give it to them, saying, "Well, I have got to give a couple down to people in the kitchen, to my connections in the kitchen to get my sandwiches in the morning."

Q. Yes.

A. To get a nice toasted bacon and egg sandwich. So he would save a bit for people coming up and bringing sandwiches and he would give the rest out.

Q. Did the inmates pay for them?

A. No. They would give him a pat on the back and say, "Thanks Bob. You're a great guy."

Q. Do you know what pills ———

A. He would get off on the pat on the back.

THE COMMISSIONER. What do you mean "get off"?

A. Build his ego up. The pills were yellow, they were small yellow downers. It said "5 Roche" on them. . . . I don't know what they start at but I have seen 5's and 10's.

MR. BYNOE. All right. Now then, did you ever have occasion to receive any pills from Mr. Martin?

A. Yes, I did.

Q. What did you do with them?

A. I took them.

Q. How many did you take?

A. I think it was a couple, two or three.

Q. Did you at any time receive pills from Mr. Martin that you passed to someone?

A. Yes, I did.

Q. Would you describe that, please?

A. Well, my bed is up against the bars and this fellow . . . Gilbert [Miner] at one time brought — it was cigars and cigarettes . . . and Bob handed me something to give to him and I went like this and I went like this.

Q. Now, you have indicated that you reached out with your right hand ———

A. I took the pills.

Q. Took the pills in your right hand and transferred them to your left and handed across to who?

A. Outside the bars to Gilbert.

Q. Yes.

A. Gilbert handed me a little box with tobacco and everything in it and I slid it through the bars and I went "There you go, Bob."

Q. Took it across and handed it to?

A. Bob.

Q. Bob who?

A. Bob Martin.

Bible's statement was read to Strickland, particularly the part referring to Strickland and Martin, and Strickland said that he did not remember some of the things mentioned but he did remember other things in the statement.

Q. And then he [Bible] continued on: "When the guy came over to the bars, the guard was not around and Bob said, 'How were the last ones?' and he replied, 'Oh, they were great,' and then he gave Bob two books, two or three packets of cigars, three packets of Daily Mail tobacco and two packets of Export Plain and two packets of Export A and Bob gave 140 pills to Brian, who gave them to the guy at the bars." Now, were you the person by the name of Brian referred to there?

A. I can remember that happening, getting all those cigarettes.

Q. And was that —

A. And tobacco.

Q. Was that what you previously testified to? Was that the incident?

A. Yes sir.

The above is corroboration by Strickland of the statement given by Bible implicating Martin in drug trafficking.

Strickland was asked about Martin's evidence implicating Miner as the one who was distributing drugs from the kitchen and Strickland as one of the recipients of the drugs. He said that that statement of Martin's was false. Strickland indicated that his only contact with Miner was when he passed over to him the drugs from Martin.

Mr. Bynoe completed his examination of Strickland by bringing out the fact that Strickland was not in 11 dormitory at the time the search took place. Strickland also said that he was never physically assaulted by any correctional officer, nor did he see any correctional officer assault any person while he was in the jail.

Strickland further elaborated on Martin's activities:

THE COMMISSIONER. . . . You said that Martin was a wheeler-dealer. Why do you say that?

A. Well, when he brought those 200 pills in, he would — well, he would put 40 away, or whatever it was, to buy whatever he wanted for the weekend. Like I was only there for the Saturday morning and each Saturday morning he would get himself a nice bacon and egg sandwich that came up from the kitchen, a nice cup of coffee, like not the one sent up for us and I thought it was pretty fortunate.

Q. How would he get different coffee?

- A. He would like a double sugar, or something; and the guy would bring him up a double sugar and coffee in a cup.
- Q. How would your coffee come up?
- A. In a big pot, like the other fellows.
- Q. You mentioned something about a \$10 bill. How did he obtain that; do you know? . . .
- A. I think it was in a shoe. I couldn't say for sure, but where else could you put a \$10 bill? . . . It was rolled up tight and I seen him unravel it and go flash-flash and put it in his pocket. . . .
- Q. Was that on the same occasion that you saw him with these 150 or 200 pills?
- A. I can't recall because he used to bring them in every weekend.
- Q. On how many occasions did you see him open up his shoe and take pills out?
- A. Two.
- Q. Yes; and isn't that a large number of pills to secrete in one shoe?
- A. You got to take into consideration they are really small pills and they were laid out flat. . . . I don't know how he did it. I sat there and have seen him count 100.

In reply to a question by Mrs. Peters, Strickland said that to his knowledge no correctional officers were being paid off with either money or pills by Martin.

With reference to the incidents involving Vassell, Martin, and Bible, the former inmates Miner, Hiltz, and Richardson were not available to give *viva voce* evidence. Since statements had been obtained from them and had been filed as exhibits, and since their evidence was of a secondary nature and was corroborated in the essentials by other witnesses, a sufficient picture of the allegations and the involvement of Vassell and Martin, together with the incident involving Bible, was obtained.

As for the correctional officers, it is proposed to deal with the evidence of those against whom allegations had been made and of others whose evidence might be considered relevant. Although other correctional officers were also called to give evidence, on review it is not considered necessary to refer to their evidence.

## EVIDENCE OF CHARLES EDWARD CASEY (as to Martin's allegation)

C.O. 2 Casey gave evidence on nine occasions with reference to allegations that had been made. He suggested that one of the reasons why he was identified so frequently was because of his size — he was easily recognizable by the inmates and therefore known to them.

Casey stated that he was on duty on May 25, 1974, and that around 6:15 p.m. he received instructions from Patterson:



A. Mr. Patterson called me to the dome and told me there would be a search of 11 dorm. First of all, he said: "You were right about the drugs in 11 dorm," and then he said that we are going to have a search now. He said, go up and have them all line up and stand beside the toilets so anything wouldn't be disposed of. . . . Well, I went upstairs and back up to the corridor and the officer that was working there with me, I told him to give me a cover while I went into 11 dorm and I informed him there was going to be a search.

MR. BYNOE. Informed who?

A. The other officer with me. . . . I don't really know who it was, sir, it could have been Mr. [C.O. 2 Robert] Driscoll. . . . We went into 11 dorm. He opened up the grille and I walked in and I said: "Everybody stand up and line up against the wall" and I went over and stood beside the toilet.

Q. Did you give any reason for telling them to line up?

A. No, I didn't, no.

Q. Would that be something unusual?

A. Well, I guess it would be; yes.

Q. Did all of the inmates obey the instructions?

A. Well, before they all got lined up there was still a few lying around in their beds. In came the rest of the officers who were going to be in the search and eventually everybody was lined up.

Q. What happened?

A. Everybody was stripped down and they were all searched.

Q. Is this a body search?

A. Yes, it was.

Q. A clothing search also?

A. Yes, it was, sir. They were removed from 11 dorm, the part where the intermittents were, and put out into another part of the 11 dorm.

Casey then described the search. He said that Martin was brought back into the dormitory after drugs had been found.

Q. Did you see anybody speaking to Robert Martin?

A. There was two officers, two officers standing talking to him. . . . Mr. Patterson was one of them.

Q. Do you know who the other officer was?

A. No, I don't, sir. . . . I eventually came over beside them and this is when Mr. Patterson showed me the shoe. . . .

Q. Having been shown the shoe and being advised by Mr. Patterson that drugs were found in there too, what, if anything, did you say or do?

A. Well, Mr. Patterson said: "Take this man to the dome," so I did.

Q. What man was he referring to?

A. Robert Martin. So I took Martin out by the arm and . . . down to the dome.

Q. On the way down did you have any conversation with Mr. Martin?

A. No, sir, I never.

Q. Did you, in a stairway, push him in any fashion so that he grabbed the stairway railings?

A. No, sir. If I had he probably would have broke his neck.

- Q. The question was: Did you push him?
- A. No, sir, I never.
- Q. Where did you take him when you took him downstairs?
- A. I took him right to the dome.
- Q. Do you recall whereabouts in the dome you took him?
- A. He would be sitting on the bench beside the Legal Aid office.

Casey said that was all that happened and the next time he saw Martin was the following afternoon.

Mr. Bynoe repeated for Casey Martin's evidence identifying Casey as a correctional officer who assaulted him in 11 dormitory soon after drugs were found there.

- Q. Now, Mr. Casey, did you in the presence of Sergeant Patterson punch Martin in the stomach in number 11 dorm?
- A. No, sir, I did not.
- Q. Did you tell him not to lie to the sergeant?
- A. No, sir, I never spoke to him.
- Q. Did you hit him on the side of his neck?
- A. No, sir.
- Q. Did you tell him to say that he fell down the stairs if he was going to be examined or questioned with respect to injuries?
- A. No, sir.
- Q. Did you know Mr. Martin before this incident?
- A. Yes, sir, I did.
- Q. Can you give any reason why Mr. Martin should give false evidence against you, Mr. Casey?
- A. No. I was talking to Martin the next day when he was back upstairs to 11 dorm. This was after the search and I got pretty hostile with him, I threatened him.
- Q. Why?
- A. Because he had drugs on the corridor and [was] passing them into the corridor where I was working. I figured that he sort of put my life on the line there, on Friday night. That was my own opinion at that time.
- Q. What do you mean by "put your life on the line"?
- A. Well sir, as silly as it may sound, I was carrying drugs to Martin. I went up there on 11 and 12 on Friday evening and I was carrying books. I didn't want anybody on my corridor and I kept carrying books back and forth from 11 dorm to 12 corridor and there was drugs in these books, there was pills and I did not notice until Saturday night.
- Q. When did you discover that?
- A. Saturday night.
- Q. After the raid?
- A. That's right.
- Q. And how did you make this discovery?
- A. From an inmate from 12 corridor.
- Q. This was information given to you?
- A. That's right, sir.

**Q.** How did that put your life in danger?

**A.** Sir, I walked into that corridor (12 corridor) that night and there was 34 men in there. I am not talking about boys, I am talking about men. The guys were looking for pen time as a matter of fact there is three of them who are looking for KP [Kingston Penitentiary] right now. . . . So I was carrying those drugs and . . . when I went in there at 9.30 to lock up, it might have been a little later, twenty to ten, I could see there was something going on, sir. Because like during the day I had been carrying cigarettes, cigars and I was taking them in to Martin from the men in the corridor. You see they had their purchase order on Friday afternoon and in return I was getting books to carry back. I should have checked the books but I did not, so I was carrying drugs to them.

**Q.** How does that put your life in danger?

**A.** Sir, I was locking up, as I was saying, with 34 men and if I had made a wrong move or said something to upset one of these guys I would have had them all on me.

**Q.** Are you indicating that if they had taken the drugs that you suspected that you had brought in, that in that condition the inmates may have attacked you. Is that what you are indicating?

**A.** That is sort of what I am, yes.

**Q.** Mr. Casey, would you tell me why you would be carrying in cigars and purchased cigarettes in to Mr. Martin who was serving an intermittent sentence in 11 dormitory?

**A.** Well, there was three inmates in there. I will not mention their names, I know their names. And they had got a purchase order on the Friday afternoon and they said, "Could I go into 11 dorm." and I said, "No, you are staying in your corridor."

**Q.** Is this 12 corridor?

**A.** That is right. I would not let anybody out, so they said will you take these in and give them to Robert Martin. First of all I took in two or three packages of American cigarettes. I took them in, and he said, well would you give these books to this certain inmate, right? So I took them back to him. And about half an hour later another inmate walks up and he says will you give him these two packages of cigars. So I take those in and then I walk back with comic books. And all this time I am dragging cigarettes over to one place and dope back to another which I don't know anything about. I should have checked the books. I didn't, you see.

Casey was asked whether he had struck any other inmate and he replied that he had done so on "several occasions" in the presence of a senior officer.

On examination by Mr. Bynoe, Casey related two instances where this had happened. He explained that such was necessary either on the grounds of self-defence or to control an inmate.

It is strongly recommended that, when a correctional officer strikes an inmate, whether justified or not, a report be made out and submitted to the Superintendent as well as to the proposed Toronto Jail Council.

Insofar as the Robert Martin incident was concerned, there was no doubt that Casey's defence was a complete denial of any assault in 11 dormitory after the search and not a matter of the degree of force used against an

aggressive inmate.

Evidence was then given as to what occurred the following day when there was supposed to have been some hostility with Martin.

THE COMMISSIONER. He was in 11 dorm by himself? . . .

A. Yes. I went in. In one part of his statement he said that I offered him a cigarette. He was probably asking me for the time of day and I said no. Something like this. I never gave him a cigarette, that's for sure. He started crying and he was yakking away there — I don't know what he was saying. But anyway I said he better just cool it, so I went back on the corridor, you know. And shortly after that they came up and took him away downstairs somewhere. I don't know where he went to.

Q. Did you tell him why you felt as strongly as you did?

A. Yes, sir.

Q. What did he say?

A. He said that's not true. He said, "It wasn't me."

Mr. Zifkin, acting for Dassy in the absence of Mr. Salem, referred to the threat Casey made to Martin.

MR. ZIFKIN. I believe you stated in evidence that you threatened Mr. Martin. I just wanted to know the nature of the threat.

A. Yes, I did threaten him.

Q. With what?

A. What I told you. I've got a good mind to knock hell out of you.

Q. Is that all?

A. Yes.

## EVIDENCE OF CHARLES EDWARD CASEY (as to Bible's allegation)

Mr. Bynoe reviewed, for Casey, Bible's account alleging that Casey hit him in the stomach in front of Patterson and assaulted him several times more on the way to the elevator, in the elevator, and after reaching the segregation area.

MR. BYNOE. Now, with respect to that, Mr. Casey, I would like you to tell us what occurred at the time and place that I have mentioned. Firstly, were you on the shift at that time working 11 and 12 corridor?

A. Yes, sir, I was.

Q. And did you have occasion to go into 11 dorm?

A. Yes, I did.

Q. Now, did you speak to Mr. Bible?

A. The first time, I never spoke to him, the second time in I spoke to him.

We were in twice in a matter of five minutes.

Q. Right. Now what did you say to Mr. Bible and what did he say to you?

A. Well, the first time when I went in I took a count, I walked around and I took a count. And the second time Mr. Driscoll walked in because it was his corridor and he took the count, the count was out when I took over the shift at quarter to three. So when he was walking around he told everybody to get into their beds so that he could make a proper count because I had made a mistake the first time I went in. So Bible just spoke up and he said, "What's wrong with you anyway, Mr. Casey just took a count." So Mr. Driscoll just spoke to him and said, "It's none of your business why I am in here, just do what I tell you." So he turned around and just said, "Well [deletion] off, then."

Q. Who said that?

A. Mr. Bible.

Q. Yes.

A. So I called him out.

Q. Called who out?

A. I called Bible out and I handed the keys that I had to Mr. Driscoll and I took him down to the dome area. I called Mr. Patterson out and told him what had happened. He said I am busy right now, he said you take Mr. Turnbull and take him over to segregation. So we took him over, we escorted him over and nothing happened in the dome or on the way over.

We took him up the elevator, I do not know what floor we took him to. He kept asking where he was going and when he got over there he took off his clothes and then he started crying. Then we put him in. Then I never seen him until later on that evening. Apparently I went back over and took him out.

Casey was asked about the alleged assault in front of Patterson.

Q. Mr. Bible says that he was at the bench sitting down, you told him to stand up, and as you did so he spoke words that I have related to you, and that you punched him right in the stomach there and then. And this was right in front of Mr. Patterson, and that Mr. Patterson would have had to observe it. Now what do you say about that?

A. I never hit him, sir.

Q. What about his allegation that on the way to the elevator you punched him in the stomach?

A. No, sir, it never happened.

Q. And the allegation of being punched and kicked in the elevator when you and Mr. Turnbull were there?

A. No, sir.

Q. And the allegation about in the segregation area being grabbed by the hair and having his head smashed against the wall?

A. No, sir, he was never touched. In no way. He walked over.

Casey was asked about the charges laid against Bible.

A. I charged him – well Mr. Driscoll and I wrote up the charge sheet together and we charged him with using foul and indecent language and we charged him



with disobeying a direct order.

THE COMMISSIONER. What was the order he disobeyed?

A. To get on his bed and sit there until the count was over.

Casey was also asked about the mix-up that he referred to in the count of the corridor.

THE COMMISSIONER. . . . On your first count, do you have the inmates stand by their beds or remain on their beds, or what do you do?

A. Well, it's not necessary, no. You use your own judgment, you see, like I could walk in and take a proper count.

Q. I see.

A. And it was wrong when I came out and, you know, I figured it would be best to have them all sit on their beds. And that way we could check them by the bedsheet and see how many were missing.

Q. So this is when Mr. Bible used foul language towards Mr. Driscoll?

A. Yes.

Q. And it was a result of not obeying an order to go onto his bed?

A. Right.

Q. Where was he?

A. He was sitting at the table playing cards.

Q. Yes. Did all the other inmates obey the order?

A. Yes, they did, yes. It wasn't as if Mr. Bible had really done something wrong. It was more as though, you know, we wanted to show when we first walked in that we had taken over the shift and we were going to be running the corridor . . .

Q. I see. Did you tell them why you wanted them on their beds?

A. No, we never told them. We just walked in and said, "Get on your beds."

Q. Yes. And, there having been a count taken just a short time before, Bible apparently resented this order?

A. Yes he did, yes. . . .

Q. And it was as a result of that that Bible was taken out of the corridor?

A. Yes it was.

Q. It wasn't that he had asked to see a white shirt?

A. No.

Q. Did you know that he had asked earlier to see a white shirt?

A. No, sir, I didn't.

The indiscriminate use of Misconduct Reports has two effects. Firstly, it puts a strain on the segregation facilities. Then, too, any law that is administered arbitrarily and without proper justification tends to produce disrespect for the particular offence and for the law generally. According to Casey's statement, Bible had not "really done something wrong". Casey went on to indicate that it was a matter of showing who was in charge. A more experienced correctional officer would have used a different approach, and maybe a little humour might not have been out of place, something to the effect, "Boys, someone must have been hiding," or "We've made a wrong count, etc." This presupposes that Casey's evidence is correct, that there

was a second count which Bible alone resented. I am not wholly satisfied that this was the situation.

Casey indicated that if the explanation had been made he might have had the co-operation of Bible. Further, according to Casey, Bible's words to Driscoll did not carry any anger with them. In fact Driscoll, in his evidence, did not even recall the matter.

As for the matter of drugs in 11 dormitory, Casey stated:

A. . . . I knew there was drugs in there on Friday night, and I told the senior officer about it.

THE COMMISSIONER. Who was the senior officer?

A. Mr. Patterson. . . . He told me there weren't enough men there. It was after lock-up. And he said, well, there's not enough men. We can't pull a search in there tonight. The reason I thought there was drugs in there, I went into 12 corridor that night, on the Friday night, and there had to be at least six inmates that were strung out on drugs when I was locking them up.

What is difficult to understand, from Casey's evidence in connection with the above, is that no steps were taken, either on Friday night or on Saturday until late in the day, to conduct a search of 11 dormitory or Corridor 12. If the matter was communicated by Casey to Patterson, then this was a serious enough matter for Patterson to convey to one of the superintendents who should be on call. Indeed, with an institution of the size and type of the Toronto Jail there should be an officer of the Superintendent class on duty, or on call, at all times. In a matter such as this, where "six inmates . . . were strung out on drugs", prompt attention was required even if it was at lock-up time.

There should also be either a sufficient backup staff or officers that can be called back to the jail to cope with emergencies.

Casey was questioned as to the Misconduct Report on Bible.

THE COMMISSIONER. What happened to the charge sheet?

A. The charge sheet was, somebody must have ripped it up or thrown it in the garbage or something, sir.

Q. It wasn't processed?

A. It was processed by me and Mr. Driscoll. It was turned in by Mr. Patterson.

Q. It wasn't processed beyond that?

A. No, sir.

Casey in his evidence indicated that it was Bible who at some time reported that "there was drugs in there for sure".

According to the log, the search of the dormitory took place between 6:38 and 7:00 p.m. and at 7:25 Bible was released from segregation and taken to 2 or 3 annex.

THE COMMISSIONER. When he was put into segregation by you, would you not ask him about the drugs there, because you suspected them?

A. No, sir, I never – I didn't ask him. I don't know, maybe I should have,

but I didn't.

Q. It wouldn't be out of the ordinary to make that inquiry, would it?

A. No, it wouldn't.

Q. And you don't think you assisted him in having him give you the information?

A. No, sir. He was upset when he went into the segregation cell. Like I say, when he was taking off his clothes he started crying. He was really upset.

Q. Why?

A. Why? Because he didn't want to go into the segregation.

Q. Do you think that he might have traded off information then in order to get out of segregation?

A. I think he probably would have, sure, but he didn't give any information to us at that time.

Q. That hadn't occurred to you, that that might be a way of getting information from him?

A. No, it didn't. Not at that time, it didn't.

Casey was asked why Bible was put in cell No. 5 of the segregation cells and it became evident from his answer that this was another example of the need for a senior officer to be present when an inmate is taken to segregation.

A. It might have been my idea to put him in there. I don't know.

Q. Is No. 5 cell not really reserved for persons who really require to be put into such stark surroundings because they may injure themselves?

A. It could possibly be, but maybe I figured at the time he deserved, did something that he may have deserved to go into No. 5 cell.

Q. I find that hard to understand, Mr. Casey . . . I am curious as to why, when you have a relatively minor breach, granted it was a breach, that he was selected to be put in that stark surroundings?

A. I don't know, sir. . . .

In answer to questions by Mr. Salem, Casey indicated that he knew Bible before but never had any problems with him.

Casey admitted that when he accused Bible of using bad language to Mr. Driscoll in front of Patterson, Bible denied it.

As for Patterson not accompanying them to segregation:

Q. When you approached him you asked him to come with you to segregation?

A. No, I never asked him to come to segregation, I just thought that he would.

Q. So he said he was too busy and he gave you permission to go to segregation with Mr. Bible?

A. And Mr. Turnbull.

Casey also stated that when an inmate is escorted to segregation it is normal that there would be two correctional officers.

It was Casey's evidence that there was never any physical contact with Bible from the time they left 11 dormitory until they reached segregation. They did not hold his arm or have any other contact with him. At all times

Bible walked by himself.

Mr. Salem asked Casey about the use of cell No. 5 and, although he had worked in the Toronto Jail since December 1972, he professed lack of knowledge as to the use of cell No. 5: "I have only realized this today, sir, since I have been here. I had no idea that they only used it for certain people. On many occasions I have gone over with senior officers and that person could be put in there for any reason."

There should have been an explanation to the line officers by the senior officer why an inmate was being put in No. 5 cell.

Mr. Carter, in his examination of Casey, referred to the regulation about senior staff accompanying an inmate to segregation.

MR. CARTER. Do you understand the regulation to be that you cannot take a person to segregation without either a senior officer being present, or being so instructed by a senior officer?

A. That's right, sir.

There were other instances of line officers taking inmates to segregation without having first obtained instructions from senior staff. With the increase in senior staff it is hoped that they will in all cases be able to accompany an inmate to segregation.

## EVIDENCE OF JOHN JOSEPH PATTERSON

C.O. 4 Patterson was born in Northern Ireland. He was 5'8" in height and weighed 145 pounds. His age was 49. He indicated when giving evidence that he had been ill for a time. He joined the Ministry of Correctional Services in May 1957. He did in-jail training with a senior officer for six months, then wrote a test and also took a three-week management course at Guelph. His normal duties were those of assistant shift supervisor.

Patterson was asked about the incident alleged to have taken place in the rotunda.

MR. BYNOE. Now Mr. Patterson, do you recall on May 25, 1974, Mr. Casey speaking to you about an inmate by the name of Bible?

A. I do, sir.

Q. Can you tell the Commission what you recall of this incident?

A. Well, Bible came down to the dome. He used obscene language, to Mr. Driscoll who was the guard up there.

Q. Yes.

A. Mr. Driscoll put a charge on him. At no time did I see Bible getting struck, because Bible was quite co-operative.

Q. Did you walk over to Mr. Bible?

A. Yes, I was speaking to Mr. Bible.

Q. Was Mr. Casey there?

A. Mr. Casey was in the vicinity; yes.

Q. If Mr. Casey was in the vicinity and did strike Mr. Bible would you have seen it?

A. I certainly would have.

Q. Did you see it?

A. No, sir.

Q. After speaking to Mr. Bible did you give instructions to Mr. Casey?

A. Well, he had to go to the segregation cell for the obscene language. I was called to some other area . . . and I believe Mr. Casey and Mr. Turnbull put him in the segregation.

Q. Did you give those instructions to Mr. Casey or Mr. Turnbull?

A. Yes, there was a charge on Brian Bible for using obscene language.

Q. Did you observe any force of any kind being applied to Mr. Bible at any time he was in your view?

A. No, sir.

Q. Did Mr. Bible make any complaints to you with respect to any force being used by any correctional officer to his person?

A. No, sir, he did not.

With reference to the above, Patterson stressed Bible's co-operativeness and indicated that there was no need for him to be struck. He went on to state that Bible was not struck in his presence.

Patterson said that later, between 5:00 and 5:15 p.m., Bible asked to see him.

A. Well, he said it is something of interest to me, which was Martin and his drugs, so I said: "Bible, when I get what I am looking for your charges will be dropped" and I got what I was looking for.

MR. BYNOE. What did you get from him?

A. I got the information about Martin, Martin's shoes, Vassell's boots and George Morris's spectacles case. He identified these three guys to me on the B landing, described them and their clothes, the whole works.

Q. Did he give you their names?

A. He didn't know their names. He described them and the beds they were sleeping in.

Q. Then what happened? You indicated that you told him that if you got what you were looking for that his charges were going to be dropped. Is that right?

A. Right.

Q. What happened after that?

A. I went up to 11 dormitory and I organized men and searched the place and got the fellows and got instructions for Bible to be released for what he was charged.

THE COMMISSIONER. I note, Mr. Patterson, that there is no entry in the segregation log to indicate that you took Mr. Bible out of the cells and around to the offices where the lawyers have their interviews?

A. The guards just didn't put it in the book, sir.



Q. Did you give any instructions in that regard?

A. No. I just made a fast trip over there. I wasn't doing an inspection or a visit or anything, just to see Bible.

Patterson said Bible never complained to him that he had been struck by a correctional officer and that he was "most co-operative" and in fact "quite friendly".

MR. BYNOE. Mr. Patterson, can you, therefore, think of any reason why Mr. Bible would falsely testify that Mr. Casey, in your presence, struck him in the stomach in the dome area?

A. Well, the only reason, sir, I could come up with is he didn't want to be known as a fink, which is a bad thing in the Toronto Jail if you get the name of a fink and he —

Q. And by the use of the word fink you mean an informer?

A. Right. This would take the heat off.

THE COMMISSIONER. That is a rather strong way to do it, isn't it, to make allegations against a correctional officer?

A. Sir, I don't know why he did it. . . . [and] I was there. I don't go for the rough stuff. Sometimes you have to be rough, but don't look for it.

Patterson was questioned further about the Misconduct Report and the fact that it was torn up rather than filed with the reason for the discontinuance of the charges.

Q. Mr. Patterson, we have heard evidence that a Misconduct Report was prepared . . . with respect to Brian Bible. Did you see a Misconduct Report with respect to Bible?

A. I did, sir. I read it. It was signed by Casey and Driscoll.

Q. What, if anything, did you do with that report?

A. As I explained earlier, sir, when he come across [with] services rendered I tore it up.

Q. Tore it up?

A. Yes.

The matter of the Misconduct Report was further considered:

THE COMMISSIONER. — after you deal with the matter, then the matter is dealt with on a review by either the Superintendent or one of the deputies. Is that correct?

A. That is not always necessary, sir. Sometimes the inmate will apologize or say something and it is dropped.

Q. I am thinking, Mr. Patterson, of the possibility, instead of trading off for a favour there would be the possibility, if the matter were investigated by the Superintendent or one of his deputies, that that might lead to some further investigation or hearing and that the inmate might be cleared of the charge. . . . You see you might not be necessarily doing someone a favour by tearing up the charge. . . .

- A. I believe that Bible admitted to using obscene language.  
 Q. Well, Mr. Casey told us here, just a short time ago this morning, that Bible denied using obscene language.  
 A. Well, sir, that officer that he used the language to —  
 Q. But he denied it before you.  
 A. No, I am sure that he admitted it.  
 Q. Well your evidence and Mr. Casey's differ on that.  
 A. It could be, it's 10 months ago, sir.

Patterson referred to the fact that Bible had an opportunity the next morning to speak to Mr. Mulhern, but the only discussion was about drugs and there was nothing to indicate that Bible was questioned about the alleged misconduct.

Patterson indicated that the previous Sunday there was a suspicion of drugs in the dormitory and that he also had some information on Friday, May 24.

A. . . . these guys were staggering around all over the place. I got the suspicion and Mr. Casey got the suspicion. . . .

THE COMMISSIONER. Did you have any information on the Friday that there may have been drugs in that corridor or in that dormitory?

A. The officers in the search department, they indicated that these guys were coming in under the influence of drugs, so they got to be getting them in some way. . . . I knew drugs was there, sir, and Bible completed the investigation.

Patterson said that, had he accompanied Bible, he would not have placed him in No. 5 segregation cell.

There was some inconsistency between Patterson's oral appraisal of Bible ("Well, I knew him, and I thought Bible was very co-operative. Any help we needed, he volunteered. I thought he was a model prisoner, to be honest with you.") and what he told Mr. Villeneuve ("It should also be taken into consideration that Bible is a troublemaker and unreliable.").

This inconsistency, pointed out by Mr. Zifkin, is difficult to reconcile, nor did Patterson validly explain it.

Patterson said he organized the search in 11 dormitory and was present during most of it. He said that Fabian Vassell "seemed to be pretty high so I removed him down to the surgery, the dome area".

As for Martin's shoes, Patterson stated: "I lifted his shoes, as far as I can remember. I saw a crack in the side of the sole. Mr. Stafford pulled the sole apart and there was two pills in there."

At the height of the search, Patterson said, between 15 and 17 correctional officers were involved. This was an indication of the drain on staff to conduct a thorough search. It had to be done quickly and efficiently.

MR. BYNOE. What did you say to Mr. Martin, if anything, and what did he say to you?

A. I said to Mr. Martin: "Are those your shoes?" . . . He said they were. He started to cry. . . . He said . . . he was Judge Walter Martin's son, which I didn't believe.

Patterson said that Martin was brought down to surgery and examined by nurses there who stated that "his pupils were dilated. He had been taking drugs."

He also said that "quite a few yellow pills" were found in the vicinity of Martin's bed "which he [Martin] would have to know about". He also found Martin to have an "excess amount" of tobacco and cigars "which possibly could have been used for trading purposes".

Patterson was then questioned about Martin's evidence.

Q. He says, Sergeant Patterson, that you were holding something in your hand and you asked him the question, "Do these belong to you?"

A. Yes.

Q. Mr. Martin says he said: "No, sir," and with that Mr. Casey said, "Don't lie to the sergeant," and punched Mr. Martin in the stomach two times and that you were standing right next to Mr. Casey and there were 10 or 12 guards standing around him and that Mr. Martin at this time said, "Honest to God, sir, I do not know about these pills, they are not mine," and Mr. Casey is alleged to have said, "I told you not to lie to the sergeant," and he hit Mr. Martin again four or five times in the stomach and then the last time, Mr. Casey's fists came to the right side of Mr. Martin's neck and he doubled over. And you were present at this time and you did not say one word about it. What do you say about that allegation?

A. I say, sir, I did not see that incident. I think Mr. Casey or any of those officers would be foolish to lift their hand in the circumstances.

Q. Men do foolish things.

A. I took Mr. Martin to surgery and he complained to me that he had a pain in his stomach. . . .

Q. Now Mr. Patterson, can you give any explanation as to why Mr. Martin would allege that you, as the senior officer, white shirt, were standing there and present and observed the correctional officer beating him and did nothing?

A. I have not a clue, sir. I could not tell you because I did not see that incident.

Q. From the way the evidence has been given, Mr. Patterson, if this occurred, if Mr. Martin was assaulted in the manner that he alleges, you were present and it was something that you could not have missed? . . .

A. Certainly I would have seen it, no hesitation on that.

Q. Did you have any hard feelings against Mr. Martin prior to this event?

A. No sir, I do not think I was acquainted with Mr. Martin before that event.

Q. Do you know of any reason, sir, why Mr. Martin would make a false accusation against you?

A. The only reason I could say, sir, was over the pills. There is no doubt in my mind that the man was guilty about those pills.

Patterson stated that both Casey and Stafford were "in the vicinity" at about the time "when we got the two pills" from Martin's shoe. He stated that Stafford left the dormitory before Martin was taken downstairs by Casey.

Patterson was asked why Martin would allege that Casey had struck him.

A. I cannot understand that, sir, because Casey was on there, I believe he was on on Friday night, Saturday night, and Casey had a suspicion of these pills.

Q. Yes.

A. He had a very good suspicion.

Q. And this was on Friday that he had this suspicion?

A. Friday, sir, the next day being Saturday.

Q. He suspected Martin on Friday, did he?

A. He suspected two or three of them.

Q. Was Martin one of those he suspected on Friday?

A. I think he might have suspected Martin.

## EVIDENCE OF THOMAS WILLIAM TURNBULL

C.O. 2 Turnbull was on duty on May 25, 1974, on the 3:00 to 11:00 p.m. shift, working Corridors 7 and 8. He had earlier worked the 7:00 a.m. to 3:00 p.m. shift that day. In other words, he was working a double shift of 16 hours. He said that he did not take part in the search of 11 dormitory but had been ordered, by Patterson, to assist in escorting Bible to the segregation cells.

He first saw Bible on the landing outside Corridors 7 and 8. As for Bible's condition, he said, "He seemed a little bit upset." He could not recollect Bible crying.

MR. BYNOE. Do you recall anything unusual happening during the course of taking this man from 7 and 8 landing to 3B segregation?

A. No, sir. The man went over very quietly, sir. . . .

Q. Would you tell the Commission what you observed and what you did?

A. I was ordered by Sergeant Patterson, who was the chief at that time, to escort Brian Bible, with Mr. Casey, across to 3B segregation.

Q. What happened, if anything, during the course of that trip?

A. No, sir, he went across quiet.

Q. Where was he taken?

A. He was taken to 3B segregation.

Q. Did you have [him] placed in the cells?

A. Yes, sir, he got changed into what we call baby dolls, which is a standard procedure, and placed in the cell, sir.

Q. Did you have any trouble with him when he went in the cells?

A. No trouble whatsoever. In fact, he was very co-operative when he went across there, sir.

Q. Did Bible, at any time in your presence, complain about being assaulted by a correctional officer?

A. No, sir. . . .

Q. At any time did you see Mr. Casey strike Mr. Bible?

A. No, sir. . . . at no time was any punches or kicking done to Brian Bible, sir. When he went into the segregation area he was ordered to undress and put on the baby dolls and he was very co-operative, sir.



In answer to a question put to him as to Bible's allegation of assault, Turnbull answered: "If there was any hands laid on Bible, it was to guide him into the elevator, but at no time did Mr. Casey or myself strike Bible or even put the boots to him, as the phrasing goes."

As for the reason why Bible was put in No. 5 cell, Turnbull could not recollect it. He said that he did not have the authority to do it, nor did Casey. He said that Sleigh, the correctional officer on 3B landing, could have had such authority but he was unable to recall if he was the one who ordered it or not. He said that under normal circumstances it would be the "white shirt", who in this case was Patterson.

## EVIDENCE OF ROBERT FULTON DRISCOLL

C.O. 2 Driscoll was described by Patterson as someone who was "not a provocative officer and was a very hard man to lose his temper". Patterson went on to say, in connection with the Bible incident, that if Driscoll had written the charge, then "believe me it was a charge". Patterson thought that Driscoll had written the charge and that Casey had signed it, but he was not completely positive on this point.

Driscoll first gave evidence in connection with the Frost and McPherson matters. He was born in 1923 in Scotland. He was married and had three children. His height was 5'9½" and he weighed 190 pounds. He began his employment with the Ministry in August 1969. He impressed one as being a soft-spoken man.

He related having received an eye injury that required 20 stitches. This occurred at the Toronto General Hospital at a time when he was on escort duty there. He received a commendation from the Ministry for holding on to and retaining an inmate. The injury was of a permanent nature involving a blocked tear duct.

On May 25, 1974, Driscoll was on duty on Corridor 11 working the 3:00 to 11:00 shift. Casey was working the nearby Corridor 12. Driscoll was asked whether he had any conversation or run-in with Bible on that day, to which his answer was, "Not that I can recollect." He did not remember Bible's removal from 11 dormitory to segregation.

As for Casey's allegation that Bible had sworn at Driscoll, his answer, which I considered quite truthful was, "That is quite possible. I don't recollect it."

He recalled taking over the keys when the inmates were in the search area but said that the only time he went into the area was when the inmates were removed and he then helped in the search. He recalled taking a count of the dormitory. He said it was possible that Casey assisted him in the count. He denied seeing any inmate struck by fist or foot.

THE COMMISSIONER. Mr. Driscoll, do you recall ever being subjected to bad



language abuse from Bible?

A. No sir.

Q. What kind of inmate was he in your opinion?

A. He was quiet . . . I never had no trouble with him.

Q. I suppose you do get language abuse from other inmates?

A. From time to time, sir.

## EVIDENCE OF DWIGHT SLEIGH

According to the 3B segregation log, C.O. 2 Sleigh was on duty when Bible was admitted at 3:04 p.m. The entry was made by Sleigh and it indicated that Turnbull and Casey were the admitting correctional officers.

MR. BYNOE. Do you recall anything unusual happening at any time between the time you first saw Mr. Bible with Mr. Turnbull and Mr. Casey until the time he was placed in the cell?

A. No, sir. . . . He was placed in without any problem at all.

Q. Was any force at all applied to his person that you saw?

A. No. He went very quietly.

Sleigh recalled seeing Bible “at various times . . . and he was in the cell crying, walking around the cell”.

Q. . . . did you have any conversation with him?

A. Just that he said that he would like to see a white shirt, pertaining to drugs in 11 dorm, sir. He knew someone had had drugs in 11 dorm. . . .

Q. What did you do as a result of his making that request?

A. I called the Chief's Office, sir, and reported it to him.

Q. Do you recall who answered at the Chief's office?

A. No, sir, I do not.

Q. Do you recall anyone seeing Mr. Bible as a result of that call?

A. I remember a white shirt coming over, but I can't recall who it was, sir. . . .

I can recall – I don't know what time it was – but I can recall that he came over and took Mr. Bible out of the segregation area.

Sleigh was unable to say why Bible was put in No. 5 cell. If it and another cell were vacant at the time it was his opinion that “whoever brought him over is the man who put him in there”.

It appeared from the evidence of Patterson, Sleigh, Turnbull, and Casey that none of them assumed responsibility for putting Bible into No. 5 cell. Bible was apparently not a serious behavioural problem, and one wonders again whether this was designed to frighten him into co-operating.

MR. SALEM. Mr. Sleigh, when you first saw Bible and watched him being placed in the cell, did you notice any marks?

A. No, sir, no marks whatsoever.

Q. What about his attitude? As I recall your evidence you said that he was co-operative and there was no trouble.

A. He was co-operative. I mean, he had an attitude the same as anyone else going into a cell. They are quiet when they first come in, you know. . . .

Q. Anyway, he wasn't extremely upset or crying at that time?

A. No, sir.

Q. Later on when you observed him in the cell walking up and down and crying —

A. Yes, sir.

Q. Have you any personal knowledge of any reason why he would suddenly do that? Was there anyone talking to him during that interval?

A. Unless he was an emotional person, sir, and couldn't stand being confined in a small area. That would be the only reason I could give you, sir.

## EVIDENCE OF JAMES MacDONALD

C.O. 3 MacDonald was the second-in-command of the search of 11 dormitory. He wrote up the Search Record, which is one of the documentary forms at the Toronto Jail. He said the information was furnished by Patterson and it was Patterson who signed the document. He said he saw no correctional officer strike an inmate while he was in 11 dormitory. He estimated that he was there for not more than three or four minutes. He said he was doing a check of the jail corridors at the time.

## EVIDENCE OF JOSEPH PEAKE

C.O. 2 Peake stated that he saw Martin in the sergeant's office in the rotunda and Martin was writing a statement at the time.

As for Martin's condition, Peake stated, "He said he had a sore head and I asked him what happened; he said he had fell down the stairs, and I went and got a couple of aspirins for him."

MR. BYNOE. Was there any conversation at all about drugs?

A. Yes, I believe there was. He said that he had passed drugs because there was somebody in there had told him to pass them, he never carried them in, but he was more or less hiding them for him. So I told him to put that in his statement that he was writing.

Peake said that he escorted Martin to segregation. He could not recall the other officer's name. He said Martin did not complain about any assault.

THE COMMISSIONER. You say that when you first spoke to Mr. Martin about the sore head he said something about a stairway.

A. Yes, he said he had slipped down the stairs.

According to Peake there was no mention of his stomach being sore. His complaint to Peake about his head may have been a continuation of the complaint made to Dr. Dubelsten of frontal headaches. There was no suggestion of any discussion about the stomach.

Q. Did you assume, from the conversation, that he was referring to stairs in the Toronto Jail?

A. Yes, sir, I would say that, I would think so.

Q. And you can't recall anything else that he said about that?

A. No, sir.

As for the conversation about drugs:

A. I just took it from the conversation that he is denying bringing them in when he said he was only hiding them for somebody.

MR. BYNOE. I see.

A. That was the inference I drew.

Q. So he didn't specifically deny that?

A. No, sir.

Q. But he did specifically say to you that he was hiding them for somebody?

A. Yes, sir.

## EVIDENCE OF JAMES BROWN and HERBERT HOGG

Both C.O. 2 Brown and C.O. 2 Hogg gave evidence confirming that Gilbert Miner received money from Robert Martin. (C.O. 2 Brown is not related to C.O. 4 James B. Brown.)

Hogg told of a conversation with Martin the weekend before the incident:

A. Martin, he admitted bringing in the money; there was no question about it and I told him, "Martin, that is a damn silly thing you did getting involved with that. You are getting a break as it is on weekend sentence and you are messing around with this sort of thing, you know." And I thought it was pretty stupid of him but I told him, "Smarten up, Martin, and maybe we can get this thing sorted out."

MR. BYNOE. What attitude, if any, did you notice, did Martin display?

A. He appreciated the fact that the matter was going to be straightened out without him losing good time.

This is an example of a correctional officer giving an inmate a chance and

using some discretion in not laying a charge. Hogg did, however, indicate that he had made a report to the Superintendent. This report was part of the larger report of Inspector Villeneuve.

## EVIDENCE OF PAUL MULHERN

The Assistant Superintendent said that on Sunday, May 26, he held an investigation into the matter of drugs in 11 dormitory and as part of the investigation he interviewed Martin.

A. I pursued the question of Mr. Martin's involvement . . . what knowledge he would have of contraband drugs in the jail . . . I tried to find out from him just how big a program of drugs was going on out in the dormitory, and told him, of course, this was a very serious matter, and unless he could give me some information to the contrary, the information I had gathered thus far indicated that he was going to be found guilty of the charge. . . . [I recall] . . . specifically . . . his denial of the fact that he had any pills in his shoe, and my pursuing the question . . . "Are you suggesting officers put them in your shoe?" And I kept pursuing this line of questioning, but I never got an answer from him, really. . . . I said, "I want to be fair in this matter with you." I said, "If you give me – anybody that comes forward – anybody that you can bring forward to speak on your behalf, give me something alternative to what I have to do with respect to what I have found" . . . but he had none. There was nothing he could give me.

Following this, Mr. Mulhern said, he spoke to Bible, Vassell, and Morris.

A. I spoke to them, sir, and Mr. Vassell freely admitted that he had brought medication, as he called it, into the jail in pill form. He said he had been experiencing difficulty getting medication from the medical staff, and felt that this was the only recourse he had. I received a similar statement from Mr. Morris and I think both of them . . . complained that they had pains to various parts of the body and they were having difficulty obtaining medication in the jail.

Well, at some point again, during the day, I should say for the first time, I spoke to Brian Bible, and he . . . cited Robert Martin as one of the kingpins . . . in the dormitory . . . who seemed to be the centre of an organized pill-pushing effort.

Then I asked him a question, I believe, Mr. Commissioner, that you yourself put to him: "Why would you come forward and give us this information freely?" And he related somewhat similarly to me what he told you, that he had a sister that had been exposed to drugs and he was quite upset about it.

Mr. Mulhern, in addition to dealing with the misconduct charge against Martin, also dealt with the misconduct charge against Vassell. He was asked about any Misconduct Report in connection with Bible, and said there was

none.

Mr. Mulhern said he was not aware that Bible had been in segregation and he added that he had never seen a Misconduct Report with respect to any alleged offence by Bible on May 25. There was further discussion about the lack of any relevant records.

Mr. Mulhern said he made a report to the Superintendent and that this was his custom where the matter before him involved a rather extensive investigation into a serious matter.

THE COMMISSIONER. You are to be commended for treating this in a different manner than just a routine misconduct. I think you did the right thing in having a supplementary report go to the Superintendent.

A. Thank you, sir.

MR. BYNOE. You have mentioned in your report and your evidence that you gave a directive on the same date, is that correct?

A. Yes, sir.

The directive in question was to the effect that in future jail clothing and footwear would be issued to all inmates regardless of length of stay in the Toronto Jail.

Mr. Bynoe questioned Mr. Mulhern about his report to the Superintendent (Mr. Whitehead).

Q. . . . on the 26th you put down that Bible was charged with a misconduct on Saturday. Is that ———

A. Well, according to Mr. Bible, if that is my report, he must have made reference to a misconduct charge, but I found no evidence of a charge being laid. . . .

Q. But you knew, I guess, then at the time you put this down that as far as you were concerned that was not correct; he was not charged with a misconduct on Saturday?

A. As far as I was concerned, I didn't consider there was any charge against him. . . .

THE COMMISSIONER. Should you not then have indicated in this report that there was no misconduct charge against him?

A. I should have, yes, sir.

Q. And in addition to that, wouldn't you have ordinarily inquired as to why he was in segregation without a charge against him?

A. I would have, sir, yes.

Q. But maybe in the light of these more serious matters that occupied your mind that inquiry was not made?

A. That would be the only possible excuse I could think, sir.

Q. When you spoke to Martin in connection with his misconduct charge, was there anything said about any allegation of assault or violence?

A. He made no such remark, sir.

The investigation of Mr. Mulhern was conducted before the Misconduct Reports were completed and he was questioned by Mr. Carter on this. The



circumstances were unusual and it was a serious matter, Mr. Mulhern said; also, since intermittent inmates were involved, there was some urgency; so the normal routine was departed from.

## EVIDENCE OF MARTIN DOHERTY

Martin Doherty had given other evidence as to his activities on May 25 in connection with the drug raid. This is set out in the Vassell allegation (previously reviewed) with reference to Robert Martin.

Doherty recalled seeing Martin brought back into 11 dormitory and asked to identify a pair of shoes. He said at that time Patterson and Casey were there. He was further asked about any assault on Robert Martin. He said he did not see any correctional officer strike Martin at any time in 11 dormitory.

Later, he took Martin to segregation from the rotunda. As for Martin's condition at that time, he said his eyes were glassy and he looked flushed.

On the way to segregation, Doherty said, Martin was "completely co-operative".

MR. SALEM. He was apologetic in respect to what? . . .

A. He said that he is sorry he caused a hassle and that he was pressured by inmates and others in the dormitory because they was under the impression that he was Judge Martin's son.

Q. Well, firstly, what did you take him to mean when he is sorry about the hassle?

A. Well, what I took him to mean that he was actually admitting that he was bringing in the pills.

Q. Did you ask him about that?

A. He had already made out a statement. I don't know what he had made out.

Q. But he apologized to you for a hassle which you took to mean that he had admitted bringing the pills in?

A. I assumed it.

Q. And he said he was being pressured by inmates because they thought he was ———

A. What he said to me was, he was being pressured by inmates in 11 dormitory, the fact that they thought he was Judge Martin's son.

Q. What did you interpret him to mean when he said he was being pressured by them?

A. Well, maybe they were coming heavy on him.

Q. What, to smuggle in pills?

A. To smuggle in pills, yes, sir.

Q. Is that what you thought he meant?

A. That is what I assumed, yes, because this does happen. . . . As I was accompanying him, he was talking away, all the way over.

Q. What was your answer, do you recall what he said?

- A. He apologized for causing the hassle. I said, if the inmates was pressuring you, why didn't you indicate it to somebody?
- Q. What did he say?
- A. Well, he said he didn't like to cause any hassle.
- Q. When you accompanied him, or escorted him over, was it necessary for you to hold his arm, or anything like that?
- A. No, sir. . . .
- Q. When you arrived at segregation . . . there was nothing unusual that occurred?
- A. No, sir.

## EVIDENCE OF WILLIAM PAUL STAFFORD

C.O. 2 Stafford said the 3:00 to 11:00 shift on May 25 was an extension of his regular shift. He was asked to join in the search by Patterson and he estimated that 10 to 12 officers were engaged in the search. "I conducted a search of their belongings and beds."

He was present during the body search of the inmates and when Martin was brought back into the dormitory and when Patterson was questioning Martin.

- A. Sergeant Patterson handed me Martin's shoes. I noticed that on one of his shoes the sole was slack. It was loose.
- MR. BYNOE. Slightly loose from what?
- A. From the base of the sole. . . . The leather sole was slightly loose. He handed it to me. I opened it.
- Q. How did you open it?
- A. Put my fingers into it.
- Q. Yes. What, if anything, did you observe when you did that?
- A. Some pills inside the shoe, sir.
- Q. Can you remember how many?
- A. About two or three, sir.
- Q. What if anything was said or done after you made that observation?
- A. Sergeant Patterson asked him if the property in these shoes was his and he denied any knowledge of the pills.
- Q. Right. Now was Mr. Casey in the immediate vicinity at that time?
- A. Yes, just before I left, sir, he was.
- Q. Did you hear anything said by Mr. Casey after Mr. Martin had denied any knowledge about the pills in the shoe?
- A. I took the shoe and the pill downstairs, sir.
- Q. You left?
- A. At that time I left. . . .

Q. At any time before you went downstairs did you hear Mr. Casey or any other correctional officer tell Mr. Martin not to lie to the sergeant?

A. I can't recall that, sir.

Q. Did you see or hear anything that would indicate to you that Mr. Martin had been struck in the stomach?

A. No, sir.

Q. Or in any part of his body by a correctional officer?

A. Not at that time, no, sir.

Q. Specifically did you see Charles Casey in the presence of Sergeant Patterson strike inmate Martin in the stomach with his fist?

A. No, sir.

One of the most articulate witnesses to appear before the Commission was an ex-inmate by the name of Hugh Hector Sutherland. He was an intelligent man, mature, with a university degree, who gave his evidence in a straight-forward manner and quite fairly. He seemed to have a genuine concern about the Toronto Jail. He had related a conversation with Stafford, with whom he appeared to be on friendly terms, and this conversation was then put to Stafford by Commission counsel.

MR. BYNOE. Mr. Stafford, with respect to Mr. Martin, Mr. Sutherland – you know who I am speaking about?

A. Yes, sir. . . .

Q. Mr. Sutherland . . . stated that he felt he was on a fairly friendly basis with you, and I believe that the day after the search . . . you spoke to him and that you said to him "Boy, did I pull a boo-boo last night." He said, "Why? What happened?" You said, "Well, I put the boots to Judge Martin's son." And he continued on and that "I might be in trouble." Now, did you have a conversation that you can recall with . . . Mr. Sutherland with respect to Mr. Martin?

A. Possibly I was speaking to Mr. Sutherland out in the yard, yes, but to say I put the boots to him, I don't think the boots was ever put to Mr. Martin in that respect, sir.

Q. Well, did you say, "Boy, I pulled a boo-boo last night"?

A. I can't honestly say I can recall saying that to him.

Q. Well, did you say, "I put the boots to Judge Martin's son last night"? If you did say it, as Mr. Sutherland said, was it true?

A. Was it true that I put the boots to him? No, it couldn't be true that I put the boots to him. I never touched Mr. Martin. . . .

Q. Now, Mr. Stafford . . . Mr. Sutherland related to this Commission that he was confined in 11 corridor, and that a search took place in 11 dormitory, and that he observed inmates coming out and that the last inmate that came out was followed by you and that you kicked the inmate.

A. No, sir.

Q. That is what he said. Now what comment, if any, do you have with respect to that?

A. My comment is the same as before. I never touched Mr. Martin. . . .

Q. Now, Mr. Stafford, can you think of any reason why Mr. Sutherland would attribute to you the remarks that he did about you putting the boots to Judge Martin's son and about you kicking another inmate if it is not true?

A. Judge Martin's son, himself, said he wasn't kicked.

Q. Now, we have realized that, but the question was: can you think of any reason why inmate Sutherland would say that about you if it is not true? . . .

A. I can't answer that. I don't know of any reason why he would do that.

THE COMMISSIONER. Suppose the last inmate was not Martin. We know now it was not Judge Martin's son. Suppose the last inmate was not Martin, but some other inmate that has been in 11 corridor. What do you say as to the statement?

A. My sliding him along with my foot, in a jovial manner, not as a vicious kick, sir. It is possible. I have done that quite often, but not — it is only, as you know I kid a lot with the inmates, I get a good response from the inmates. It is possible I could have done this, but I don't actually remember doing it.

Sutherland was asked who might have been within earshot of the conversation he had with Stafford in the exercise yard. He mentioned two friends of his, inmates Frank Sparrow and Ian Garrett, both of whom were called as witnesses. Garrett was unable to recall overhearing any conversation between Sutherland and Stafford. Sparrow remembered being told by Sutherland of a conversation with Stafford in which Stafford expressed personal concern about the manner in which some correctional officers had handled an inmate named Martin.

Stafford had indicated to Sutherland, Sparrow said, that "the guards had possibly gone too far, or overstepped their bounds in . . . the search of 11 dormitory", that they "should not have been so rough with . . . this individual because he, being the son of a judge, could cause repercussions so far as the guards were concerned in the jail."

## EVIDENCE OF PIERRE EDESS CABON

This male nurse, when giving evidence, indicated that he was no longer employed at the Toronto Jail. I considered him to be a capable, experienced, and sympathetic man. He was a duly qualified registered nurse, having originally qualified in London, England, over 20 years ago.

He was on duty in the surgery with Mrs. Kendrew on May 25 when Martin was brought in. Mrs. Kendrew was examining Martin but he examined his eyes, he said.

MR. BYNOE. What, if anything, did you observe?

A. The pupils were slightly dilated.

Q. And did you have any cause to comment on that to anyone?

A. Not to anybody, but drew my own conclusions. I thought perhaps he might have been taking some drugs. . . .

Q. Did Mr. Martin in your presence make any comment with respect to an allegation that he had been beaten by guards?

A. No, never.

Q. Did you observe any unusual marks on Mr. Martin's body at the time you had him under observation?

A. No, no, I didn't. Because he would have mentioned that to me, that he was beaten up, and then perhaps I would check him out. But there was nothing at all, whatsoever. . . . No, there was no question at all, or allegation about a beating up. . . .

THE COMMISSIONER. But no allegation having been made to you, you didn't check him for this?

A. As far as I was concerned I just looked at him and looked at his dilated pupils. Because Mrs. Kendrew was taking his vital signs, which means blood pressure.

Q. Yes. Why was it you wanted to check his pupils? Had there been any suggestion about drugs that you knew of, or do you do this as a matter of routine?

A. No. I think Mrs. Kendrew – apparently there was a mention about Mr. Martin being taken to surgery because of drugs, and so this is the usual routine.

Q. I see. Well, was there a mention in some manner or other of drugs that caused you to check his pupils?

A. Yes, there was.

## EVIDENCE OF JOSEPH LAUWERS

Nurse Lauwers, aged 52, was the head nurse at the Toronto Jail. He obtained his qualifications in Holland. After three years he obtained a diploma in psychiatric nursing and after two years a diploma in general nursing. He came to Canada in 1952 and first worked at the Toronto Psychiatric Hospital for two and a half years. He was then half a year at the Toronto General Hospital after which he went to the Toronto Jail. He began working for the Ministry in May 1955, and he has remained at the Toronto Jail since that time.

The segregation records indicated that on Sunday, May 26, Martin left segregation to go to surgery in charge of Lauwers, but Lauwers was unable to recall this. He stated that a doctor would be on duty at the time and that he would refer the inmate to the doctor. He did not recall any conversation with Martin on the way from segregation to surgery.

Mr. Carter, in his examination, pointed out that an entry at 1:00 p.m. on May 26 indicated that Lauwers had visited Martin and that there were no complaints.



## EVIDENCE OF MRS. EDNA KENDREW

Mrs. Kendrew is a nurse who had been employed by the Ministry of Correctional Services for 17 years, and had been at the Toronto Jail for eight and a half years.

MR. BYNOE. When Mr. Martin came in did you examine Mr. Martin?

A. Well, I think – he just had shorts on and I didn't see any marks on his body or anything. He was just blonde and big and fat. No scratch marks on him or anything.

Q. Did he make any complaint to you?

A. I asked him, I think, what was wrong with him.

Q. Yes.

A. And he said he had a sore neck. And I said what happened, how did you get that? And he said he fell down the stairs a few days ago, and he just seemed to be very upset.

Mrs. Kendrew corrected herself and said that the statement about falling down the stairs was "a few minutes ago" as was the reference in her log. She gave further evidence about Martin:

A. He told me that he was lying on the bed when the guards came in and got him. He may have said a little bit – sort of like he gave me the impression he was ruffled up, but that wasn't any concern of mine much. I didn't question him on it, if there was a fight or a struggle or anything. I didn't question him. So I just said, well, I don't see any marks, and he told me he had high blood pressure, so I took his blood pressure.

Q. Did you see any marks on his neck?

A. No, I didn't see any marks on his neck.

Mrs. Kendrew was nervous while giving her evidence. She seemed to be attempting to recall events, but she also appeared to be guessing and trying to rationalize and have her evidence compatible with the nurses' log book.

Martin's evidence was reviewed for Mrs. Kendrew:

MR. BYNOE. Mr. Martin stated that when he came in you asked, "What is your problem?" or "What is the matter with you?" and Mr. Martin said, "The guard who was standing there had taken me to the nurses' station, he was standing right next to me and I told her, I said – 'I have been told that I fell down some stairs.' " Now did Mr. Martin say "I have been told that I fell down some stairs?" Now did Mr. Martin say that to you?

A. No, he didn't say, "I have been told . . ." Not to my recollection. He said, "I fell down" and he seemed to make light of it. . . .

Q. Mr. Martin continued in his testimony . . . "The guard left the room for a short period of time and I told the nurse, "I have been beaten and I am afraid to say anything with the guard present. My stomach is just killing me and the side of my neck is very, very sore." The nurse examined the side of my neck and

examined my stomach and she gave me a green liquid which tasted something like Milk of Magnesia. She said this will calm your stomach down, or something to that effect." Now, did Mr. Martin in the absence of the guard tell you, "I have been beaten and I am afraid to say anything with the guard present"?

A. He gave me the impression that, well, he said he was lying on the bed and they got him off the bed in a hurry. I don't know as he ever said anything about being beaten. I did not pay much attention to that because that was — I looked all over his body and did not see any marks.

Q. Well, Mrs. Kendrew, an inmate told you he had been beaten by the guards. would you not pay attention to him?

A. Well, I did. I looked and saw no marks on him.

Q. The question is this. Did the inmate —

A. He said he was just lying on the bed when they came up and got him.

Q. Would you listen to the question? Did Mr. Martin tell you, "I have been beaten and I am afraid to say anything with the guard present"?

A. He said something about he was sort of hustled or tussled up, or something like that. I don't think it was beaten. . . . I can't remember him saying anything about he was afraid to say anything with the guard present. Perhaps he did, but I can't remember. . . .

Q. Do you remember that he told you his stomach was killing him?

A. He may have but I just can't remember a great deal about it. He was very upset. He was very convincing that he had nothing to do with drugs whatsoever and he just said he had one more weekend to go and would not jeopardize that one weekend to get mixed up with drugs. . . .

Q. Mr. Martin . . . said that you went on to explain to him that the guards were very upset, and they had just received a pair of high-heeled boots from an inmate and they had just been extracting numerous amounts of pills with a pair of forceps from the heels of this inmate's boots and the guards were upset about this and everybody was up in arms over it. Do you recall that?

A. No, I did not tell him all that, that the guards were upset. I never said that to him. . . . I can't remember saying anything about high-heeled boots.

Mrs. Kendrew felt that she had been deceived by Martin and lost a little of her faith in human nature. "I asked one of the guards after that, did he [Martin] have drugs, and he said yes, and I said well, I can't imagine anyone being so convincing that he didn't have anything to do with drugs and would sit there and lie to me. I just didn't like it."

## MARTIN-BIBLE SUMMARY

The evidence in the Martin and Bible allegations has been reviewed in some depth and the narrative has been interspersed with comments. This summary will be limited almost exclusively to findings, which are based on the

evidence. In addition, of course, I had the advantage of hearing, and later rereading, *all* the evidence that came before the Commission, as well as of observing the demeanour of witnesses while they gave evidence.

The findings are as follows:

1. Martin was engaged in the trafficking in drugs within the confines of the Toronto Jail while serving an intermittent sentence in the jail. There was no evidence that he derived any economic profit from this. His motivation appeared to have been twofold: (a) to gain acceptance from and achieve popularity with other inmates, and (b) to obtain favours in the form of extra food and non-regular jail fare, which would make his jail life more pleasant; possibly it would be more accurate to say "less unpleasant".

2. Martin was assaulted, as he claimed, by C.O. 2 Casey in the presence of C.O. 4 Patterson. This consisted of blows to the stomach and neck with the accompanying warning, "Don't lie to the sergeant."

3. Martin was indeed lying to the "sergeant", not only about his knowledge of drug trafficking, but also about his alleged family relationship to the late and esteemed Judge Walter M. Martin. He maintained the second prevarication during the time of his assault, and it was believed by the correctional officers then and for a time afterwards, causing some consternation among, and comments by, some of them.

4. Bible was assaulted by Casey in the rotunda in the presence of Patterson.

5. Bible was not guilty of any misconduct offence and was placed in segregation unwarrantedly by Casey with the knowledge and approval of Patterson.

6. The actions against Bible with reference to his assault and segregation were not prompted by malice, but were intended solely to frighten him and thus obtain information to assist in solving, and hopefully breaking, the drug trafficking in the jail at the time. Some pragmatist might consider that the end of getting Bible to talk justified the means that were used. Such practice, aside from the fact that it involved an unjustifiable use of force against the inmate, entailed the risk of future abuse, if it was condoned. For this reason, other means such as interrogation by the Superintendent or even outside investigation by the Ministry's inspectors or the police must be the approved procedure. Although there are also dangers in holding out favours, such as time off for giving information affecting the safety and security of the jail, its staff and inmates, this measure is preferable to the unwarranted punishment of an innocent inmate.

7. The amount of force employed against both Martin and Bible was less than alleged by them. Although not justified, it was more serious (particularly in Bible's case) in concept than in the actual amount of force used or in any repeated application.

8. Both C.O. 2 Stafford and C.O. 2 Turnbull had been mentioned as having been officers involved in the above assaults. In the case of Stafford, there was confusion of identity between him and Casey. As for Turnbull, in the absence of any corroborating evidence, I accept his denial in so far as his own involvement was concerned.

## The Sham Maharaj Allegation

*"We conversed on an amicable basis. We discussed matters, particularly when he was supervising the exercise yard, and we were very friendly."  
(Hugh Sutherland, referring to C.O. 2 William Stafford)*

*"Well, after the guard shouted out what was going on, one of the fellows said, 'Oh, this fellow slipped on a banana peel,' jokingly, and the guard said, 'Ah, that's a shame.' He said, 'You should be more careful . . .'"  
(Inmate Ian Garrett)*

*"It appears to be the law of the jungle in prisons that child-molesters are beaten up; especially in this case, because they figured that he was going to be deported without any punishment. . . . It appears as though the inmates seemed to think that any of these foreign chaps that indulge in child-molesting are allowed to escape because they are deported instead of being put in our prisons and they take it upon themselves to enact their own laws."  
(Inmate Ian Garrett)*

*" . . . saying that I said such a thing is against any, all or any training that I have ever had in England, in Saskatchewan or even in Ontario, sir."  
(C.O. 2 Thomas Turnbull)*

## EVIDENCE OF GARY DASSY

Dassy did not know the name of the inmate involved in this incident, but said he was from Pakistan and was in Corridor 11, which was being used at the time as an immigration corridor. Dassy placed the incident in late June or early July 1974.

A. Well, the kid was a child-molester. The Pakistani was a child-molester. I believe he was responsible for the molesting of two young girls. . . .

MR. BYNOE. Have you any idea of the age of these young girls?

A. I believe they were six and 10, sir.

Q. All right. Now you say the inmates got to know about the charge?

A. Yes, sir, with a little help.

Q. Do you know how that happened, that they became aware of the charge that he was on?

A. From the guards, sir.

Q. Do you know from who?

A. I believe [C.O. 2] Tommy Turnbull, sir, is the name.

Dassy thought it was Casey who had informed him about the matter, during a coffee break.

A day or two later Dassy was working in Corridors 11 and 12 with Turnbull, and Turnbull told him "how the inmates got at the diddler in one of the cells".

Q. What is a diddler?

A. It's the jail term for child-molesters, sir.

Q. Yes, and what else did he say?

A. He said they got him in one of the cells and the inmates took turns beating him and he said well ———

Q. Do you know how they found out?

A. Yes, and Tommy said, "Well, I told them."

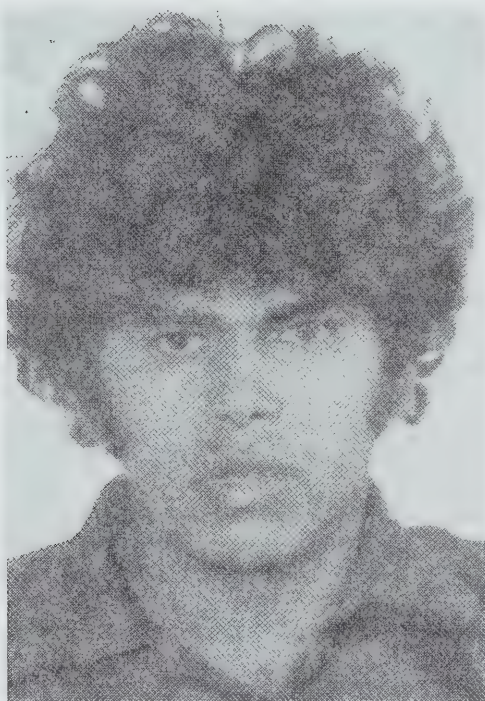
Dassy said that the inmate whom Turnbull had told was one of the orderlies in dormitory 1A, which was then the hospital dormitory. Dassy said that the inmate then told him "what him and everybody else in 11 corridor had done to this diddler".

A. . . . Thomas Turnbull told me what he seen when the inmate came out of the cell. He crawled out of the cell and up to the front of the grilles, but the inmate told me what went on in the cells. . . . And I believe the inmate about a week later was let out on his own recognizance. He would have been killed I think in the jail. . . .

Q. That is all the information you have about that incident?

A. Yes, sir.





*Sham Maharaj*

## EVIDENCE OF HUGH HECTOR SUTHERLAND

Among the inmates giving evidence on the Sham Maharaj incident was Hugh Hector Sutherland. This man was one of the most intelligent and articulate who gave evidence before the Inquiry, and a very concerned individual in connection with the problems facing the Toronto Jail. I was very much impressed with Sutherland and with the evidence he gave. An inmate such as he could contribute to discussions with reference to the Toronto Jail. He could represent a point of view that should be heard, that of persons who have served time as inmates of the Toronto Jail. For this reason I have mentioned his name as a possibility in connection with the suggested Toronto Jail Council.

Sutherland gave evidence on March 3, 1975. He was 49 at the time and therefore possessed a certain maturity.

In May 1974 he was convicted of conspiring to defraud and conspiring to effect an unlawful purpose and was sentenced to eight months on each charge, concurrently, and in addition was fined \$15,000 or an additional eight months. Subsequently, for an offence of conspiracy to defraud, he was convicted in September 1974 and sentenced to 10 months consecutive to the

term then being served. On December 11, 1974, he was released on parole. As for his record, it was indicated that in August 1965 he was fined \$200 for an offence of a different nature. He was in the Toronto Jail from May 17 until June 19, 1974.

Sutherland mentioned a chance meeting he had with Dassy in a department store, during which there was some discussion of the Sham Maharaj incident. While at the Toronto Jail he had had some contact with Dassy and had become familiar with C.O. 2 Charles Casey and C.O. 2 William Stafford and knew C.O. 2 Clifford Tasker by name. "The others I did not know by name although we conversed occasionally."

MR. BYNOE. What was your relationship and on what basis did you happen to know Mr. Stafford and Mr. Dassy?

A. Mr. Stafford I got to know just on a conversational basis. We became, as best can be in the Don Jail, a relationship between a guard and a prisoner, fairly good friends. We conversed on an amicable basis. We discussed matters, particularly when he was supervising the exercise yard and we were very friendly. Mr. Dassy I got to know a little later on and I found that he was a very sympathetic person, at least to myself and the people that I was in the area with and in our opinion one of the more pleasant guards to know.

Q. What about Mr. Stafford, what basis was he on?

A. He was on a good basis. I got on with all the guards extremely well so I cannot speak for other people or for anything else. Mr. Stafford, in his conversations with me, indicated that he was, shall we say, a fairly strong person in the jail as far as reaction but I got along with him fine. It was a very friendly relationship.

Sutherland then related a conversation he had with Stafford.

A. I don't remember the exact date, no. I would have guessed it was around the 27th but it may have been earlier. . . . There was a discussion carried out between Mr. Stafford and myself in the exercise yard and it was regarding a gentleman of East Indian extraction, either Pakistanian or East Indian, and I believe, I could be wrong, it was a name resembling Mohammed. . . . And he had been brought in on a charge of indecent assault on minors, I believe.

I was told that —

Q. Who told you this?

A. I am relating this from what Stafford told me.

Q. So Stafford told you that a Pakistani or East Indian, whose name was similar to Mohammed, had been brought into the Don Jail with respect to an offence involving an assault on minors?

A. Minor females. . . . And he indicated that one was six, I believe, and one was eight years old, and I won't say he took relish but he was quite definitive and quite clear and lucid in indicating what he had been responsible for doing to him [the inmate]. . . . He indicated when the party in question, the Pakistani or Indian, had come in, he had been, and I quote his words as accurately as I can remember, booted down the stairs and then they beat him and put the boots to him in the basement.

Q. Did he say who did that?

A. He [Stafford] says he was a party to it. He named other names.

If the information was correct then this is another example of correctional officers going beyond their terms of employment and duty in administering punishment to an inmate for no reason other than the disapproval of the offence for which the inmate was charged. No matter how heinous the crime, it is not the duty of the correctional officer to exact punishment beyond that which has been imposed by the courts.

Q. Did you hear or see or have anything to do with a gentleman of that description in the jail at some later time?

A. Yes. Mohammed eventually ended up in the same corridor I was in, number 11. When he came in I was not aware of who or what he was. . . . Now the guard on duty, and I cannot recall who it was – I thought it was Mr. Tasker, but I have also been led to understand that it might have been Mr. Turnbull . . .

Q. Where did you get Mr. Turnbull's name?

A. I cannot recall.

Q. Was it from anybody from this Commission, or was it from an inmate?

A. It was either from a guard or from an inmate.

Q. And can you tell us when you got that information?

A. No, sir, I cannot.

Sutherland's candour and reliability and his attempt to give evidence only on matters that were within his knowledge are exemplified in this dialogue.

Q. Now you originally said you thought it was Mr. Tasker?

A. Right.

Q. But how sure are you of that?

A. I am not sure.

Q. It would be unsafe then for us to attribute these acts to Mr. Tasker that you are about to describe?

A. I would say it would be very unsafe. It was a guard.

Sutherland was then asked to relate what occurred.

A. What the guard did was after the inmate was let in, he informed the corridor man – I cannot recall his name either – that this was ——

Q. Where did he do this?

A. Through the grille.

Q. Did you hear any of this?

A. Yes, I heard some of it.

Q. What did you hear?

A. I heard that Mohammed – this was the Mohammed that had been in the vernacular of the institution a tiddler [elsewhere referred to as a “diddler”] or had committed an indecent – reputed to have committed an indecent assault ——

Q. Is that the word, tiddler?

- A. Yes, upon female juveniles [and] that he was going down for a cup of coffee.
- Q. So the guard said that Mohammed was in there because he was the tiddler?
- A. Yes.
- Q. And that he, the guard, was going down for a cup of coffee?
- A. That is right. . . .
- Q. Did you see the guard leave?
- A. Yes.
- Q. What, if anything, happened then?
- A. Then I returned into my cell.

Sutherland said he had occupied the first cell, the one closest to the grille. From that vantage point he could "determine normally who went in and who went out and what went on through the grille".

- A. The conversations, we could hear them. When the guard left I was inside the cell and all of a sudden I heard what could only be considered as juicy sounds from outside or the sound of body blows, and I stuck my head out and there were several inmates . . . punching Mohammed.
- Q. Were the punches landing?
- A. Yes.
- Q. What effect, if any, did they appear to have on the man we described as Mohammed?
- A. He fell to the floor and was either covering himself up and suffering pain or suffering pain and covering himself up. I backed into my cell at this point.

Following the assault, Sutherland said, the inmate "eventually arrived at" the entrance to the landing.

- A. The guard returned in about half an hour and Mohammed tried to tell him that he had been beaten up or injured, and the guard said "Oh, did you fall down?" and took him out. . . .
- Q. This is what the guard said, "Oh, did you fall down?"?
- A. That is correct.
- Q. And then he took him out?
- A. Right. . . .
- Q. How old was this fellow Mohammed have you any idea?
- A. I would have guessed he was in his late teens or early twenties.

Sutherland related that he came to give evidence before the Commission as a result of his chance meeting with Dassy in a department store. . . . "Officials from the Commission phoned me. . . some time afterwards."

The Commissioner asked Sutherland whether Stafford had mentioned the names of any other correctional officers and Sutherland said he had no recollection of that.

Sutherland did not exclude the possibility that he had learned of Turnbull's name from Dassy when they had their chance meeting.

On cross-examination by Mr. Carter, Sutherland appeared uncertain as



to whether Turnbull was the correctional officer he had overheard talking to the corridor man.

MR. CARTER. You can't be specific about who the correctional officer was and you don't know who the corridor man was?

A. No, and I don't think it is important who the officer was – the fact that it was an officer.

Q. It may not be important to you. I am sure it is very important to the officer you are making the allegation against.

A. I am not making an allegation against any specific officer, though.

Q. How long was the officer away from the outside of the corridor?

A. I would presume about half an hour. . . .

Q. Immediately upon his return, this man, Mohammed, was removed from the corridor?

A. Yes.

On the matter of the responsibility or involvement of a particular correctional officer, Mr. Carter was indeed correct when he indicated that it was of importance. On the basis of the principle of the matter, Sutherland was also correct in saying that the important fact was that it was an officer who had acted in the alleged manner.

Sutherland was asked who else might have been within earshot of the conversation. He mentioned two inmates who were friends of his, Frank Sparrow and Ian Garrett. These persons were also called as witnesses. He did not recall another correctional officer being within earshot.

Q. When you observed force being used against this East Indian or Pakistani gentleman what, if anything, did you do?

A. I kept out of the way.

Q. Did you call out the guard to stop it?

A. No, no, there wasn't a guard to call. . . . By the time I was aware of what was happening, it was largely over. I mean I had gone into my cell and I came out when I heard the sound of blows. By that time, you know, the deed had been done. There was no point in involving myself.

Since it was not customary for a correctional officer of one of the corridors of a landing to leave unless there was a correctional officer remaining on the other corridor, Mr. Bynoe inquired whether the correctional officer on Corridor 12 might have been present during the alleged beating of Maharaj. Sutherland said, "There was enough noise going on that had there been one he should have come to see what was going on."

Sham Maharaj was apparently admitted to bail, and while on bail he disappeared. He was not located and so could not be called as a witness. This was prior to the tightening up of the procedures for carrying out the provisions of the Bail Reform Act.

Two others who were called to give evidence were Ian Garrett and Frank Sparrow, friends of Sutherland who had been convicted with him. In view of



the evidence of Sutherland and because there was not much in controversy with reference to the Sham Maharaj incident, the evidence of Garrett and Sparrow will not be reviewed at any great length. Both were in Corridor 11 at the time of the Sham Maharaj incident.

## EVIDENCE OF IAN GARRETT

Garrett had no complaints about the treatment he received from the correctional officers and did not see any correctional officer assault an inmate. He did recall the other inmates assaulting "a young chap" of East Indian origin. He did not recall the name of the person assaulted, but recognized Sham Maharaj from a photograph as the person who was assaulted.

He stated that about two weeks after he had first come into the Toronto Jail he noticed that the inmates "seemed to be getting prepared to do something. . . . They were standing around, obviously cooking something up, and I . . . noticed that the guard had disappeared".

A. The next thing I saw was one of the chaps taking a lunge and punching a fellow as hard as he could in the stomach . . . then he took a second blow at him in the face, and he walked away.

MR. BYNOE. Who walked away?

A. The chap that punched him. . . . And another chap came up and he drove into him with his fists a couple of times and then he walked away, and a third chap came up and he did the same thing. The next thing I knew the chap was on the floor and there were flurries of punches and kicks at the chap while he was lying on the floor. . . .

Q. Now then you say a guard came up after this was over?

A. Yes.

Q. And what was done and what was said?

A. Well, after the guard shouted out what was going on, one of the fellows said, "Oh, this fellow slipped on a banana peel," jokingly, and the guard said, "Ah, that's a shame." He said, "You should be more careful," and another guard came along. They unlocked the door and they went in . . . and gently helped him to his feet and walked out with him, and that was the end of the incident.

Garrett stated that one of the inmates who had assaulted Maharaj told him that Maharaj was a child-molester.

Q. Did they say why they had beaten him?

A. It appears to be the law of the jungle in the prisons that child-molesters are beaten up; especially in this case, because they figured that he was going to be deported without any punishment.

Q. By "punishment" did they mean time in prison?

A. Yes. It appears as though the inmates seemed to think that any of these

foreign chaps that indulge in child-molesting are allowed to escape because they are deported instead of being put in our prisons and they take it upon themselves to enact their own laws.

There are two schools of thought about sentencing people who are to be deported. One is that, since there will be deportation and the person charged is to be expelled from Canada and not allowed to re-enter, this is punishment in itself and why should the Canadian public be saddled with the expense of feeding and housing such a person? The other school of thought is that the court should not be concerned with immigration matters and should pronounce a “proper” sentence regardless of the fact that deportation is to follow. It is difficult to set out any hard-and-fast rule and, depending upon the circumstances of the case, one procedure may be followed at one time and the other procedure at another time.

Garrett was unable to recall whether the person who told him about Maharaj being a child-molester had obtained this information from a correctional officer or from a friend who had obtained it from a correctional officer.

## EVIDENCE OF FRANK WOODBRIDGE SPARROW

This witness was also involved in the offence for which Sutherland and Garrett were convicted. He was sentenced to the longest term of the three (four years and four months) and he indicated in his evidence that he had spent time at Kingston Penitentiary.

Sparrow said that he had not seen force being applied to any inmate by a correctional officer, during his stay at the Toronto Jail.

As for the Sham Maharaj incident, he apparently was elsewhere in the corridor when the incident occurred. He said: “An inmate passed me and as I looked at him he appeared to have – to be bleeding from the nose or had a bloody nose. . . . I continued on my way because I assumed someone had hit him or whatever, and went back to my cell and started to do my morning duties.”

He was able to identify the inmate who was bleeding as being similar in appearance to Sham Maharaj. On being shown Maharaj’s photograph, he said, “It is a very good likeness.”

Sparrow’s recollections of other events at about that time were:

A. Just as I approached my cell and went into it, there were one, two, maybe three inmates standing at the grille talking to the guard. And the guard was talking about – and this was just a jumble of words more than sentences, it is not sentences – but the guard was talking about an eight-year-old girl and a six- or four-year-old girl and rape, and those words I remember hearing. This is him talking to these inmates.

Q. You heard this after you saw the man with the bloody nose?

A. That is correct.

Q. Yes.

A. Then I – I am still making the bed or something and I heard some commotion, noise of scuffling, and there were large benches in these corridors which if you move them on the wood floor made a lot of noise, and the sound of those, and this guard yelled down the corridor words to the effect, “Don’t mark that man,” or “Don’t leave any marks on him.”

Q. Who uttered those words?

A. The guard. . . . There was some – then he turned around – that’s right, then he turned around and left.

The allegation was that the correctional officer had connived in the assault on Maharaj.

Sparrow said the correctional officer then left his station for a period of one to three minutes, and when he returned he called Maharaj forward and removed him from the corridor. As for the conversation at that time, Sparrow said the correctional officer questioned Sham Maharaj:

A. And the guard said, “What’s the matter with you?” or “What happened to you?” or something of that nature, and I think the first time the inmate didn’t answer. I think the guard repeated the question. . . . And the second time he asked him the inmate said “They beat me.” . . . And the guard said – I am paraphrasing now because I can’t quote exactly the words he used, but he said, “Well, they didn’t beat you, you slipped and fell,” or “You fell down and hurt yourself,” or whatever.

Q. Do you recall that specifically?

A. Yes.

Sparrow identified the correctional officer who was present each time as the same correctional officer and picked out the photograph of C.O. 2 Thomas Turnbull.

Q. Now, Mr. Sparrow, I called Mr. Garrett to give evidence in this matter, and my recollection is that he indicated that he heard some conversation between a guard who had walked away from the area and then returned, and it was after this man was beaten and the guard said, “All right, what’s going on?” And . . . an inmate . . . not the inmate that was beaten . . . said, “He slipped on a banana peel.” And the guard said, “Oh, that’s too bad, you should watch where you’re walking.” Do you recall any such conversation or such remarks?

A. Yes.

Q. Did that occur?

A. Yes it did.

Q. Having heard that, is there any change you would care to make with respect to your recollection of what was said?

A. No. I don’t think that happened at the same time. I think that happened afterwards. It did happen, there is no question about that.

Sparrow attributed this conversation also to Turnbull.

## EVIDENCE OF THOMAS WILLIAM TURNBULL

Mr. Bynoe reviewed for the benefit of C.O. 2 Turnbull the evidence that had been given against him with reference to the Sham Maharaj incident. Turnbull was also shown a photograph of Sham Maharaj, which he said he did not recognize.

MR. BYNOE. We have been advised, Mr. Turnbull, that that particular photograph, that man, was an inmate at the Toronto Jail and was in No. 11 corridor. Mr. Dassy in his evidence . . . testified that there was an incident involving a Pakistani or an East Indian, and that this man was in 11 corridor in early June or July of last year. And that this inmate was a child-molester and he was responsible for molesting two young girls, aged, we believe, between six and 10. And that the inmates of 11 corridor got to know about this charge because the guard on the corridor had told other inmates of this man's offence. And that Mr. Dassy advised that you were in fact that guard.

Turnbull was advised of the evidence of Sutherland and Sparrow and he recalled these two and a third inmate being in Corridor 11 where he was on duty.

Mr. Bynoe gave Turnbull the details of Sparrow's allegations, and then summarized them: ". . . that you were the guard, that you deliberately informed inmates in No. 11 corridor that this man had committed the type of offence that is alleged and virtually incited or invited the inmates to assault that particular inmate, and then walked away and let the assault take place. Then you returned and took the man out, with the comments that you just heard."

Turnbull admitted being on duty.

A. I was the guard working on 11 and 12, sir. . . . Now the first time I came into contact – I think it was with Mr. Casey, who was the officer up there. We had been discussing, which is normal procedure for any new officer coming onto the corridor. We checked the board, sir, and looked at the names of all the inmates on that particular corridor. We do it to see who are the trouble-makers and who you might expect trouble from, sir. Who are the quiet ones and if there are any special cases. This man Sham Maharaj.

Q. Maharaj Sham or Sham Maharaj?

A. I think his name was Sham Maharaj on the board, Mr. Bynoe.

Q. Thank you.

A. We were discussing things in general.

Q. You and who?

A. I think it was Mr. Casey who was there. Not Mr. Tasker.

Turnbull indicated that his conversation with Casey took place at the guard station and that they were talking in normal conversational voices.

A. Well, when I got my eye on Sham Maharaj's name, I mentioned to Mr.



Casey – now I couldn't tell you exactly what I said to him, because we had discussed it because it was an unusual name, and I think the case had been in the papers. And we were discussing the case and we were wondering why he had been put up into 11 corridor.

Q. Is that unusual?

A. Well, we took it that he was for deportation, having a name such as that, sir.

Q. I see. And is that corridor used for deportation cases?

A. At that time it was, sir. We used to keep the deportees up on 11 corridor.

Turnbull was one of several correctional officers who gave evidence at a later date with reference to the second phase of the inquiry. At that time he impressed the Commission as being a rather straightforward and outspoken person. With reference to this particular incident he was candid enough to indicate that his conversation with Casey might have been overheard. Further, Turnbull struck one as being a moral person who would strongly disapprove of the conduct with which Sham Maharaj had been charged.

A. I was talking with Mr. Casey. We could have been overheard, because we have orderlies which is loose in the dormitory, where the orderlies sleep. We could have been overheard, but as far as telling the inmates directly to their face what this man was charged with, no way, sir.

Q. Well, the inference could be drawn from some of the evidence, and that is why I am putting this to you, Mr. Turnbull, that if you conducted the conversation, as you allege, with Mr. Casey, that you deliberately did so in such a loud voice as to deliberately permit the inmates to overhear. What do you say to that?

A. No, sir.

Q. Should that inference be drawn?

A. No, sir. Whatever it is I am talking to Mr. Casey about, we don't go whispering around to another officer. We were just talking in a normal voice.

The correctional officers on duty in the corridor should know which inmates might be problem cases. It is not necessary that the actual charge be communicated to the line officer. It is sufficient if he knows that someone is in his corridor on a morals or sex charge and that he might need protection from the other inmates.

The question arises, whether it was necessary for Turnbull to pass the information on to Casey, who apparently was looking after the adjoining corridor, Corridor 12. If it was necessary, steps should have been taken to ensure the confidentiality of the information.

Turnbull confirmed that he was the one who had Sham Maharaj moved into protective custody in 3 annex, and in this he took the right procedure. I cannot understand why it was not taken earlier, or initially, and this seems to be almost a classic example of locking the barn door after the horse has flown. Turnbull said: "The first time I came in contact with this Sham Maharaj when he came up to the gate, he told us that he wasn't getting on with the men in the corridor. I removed him and, realizing what his charge was, I put him into protective custody up in 3 annex, and I notified the office,



the Chief's office, of what I had done.

Judging from the evidence of the other witnesses, Turnbull's statement that Maharaj told him "he wasn't getting on with the men in the corridor" appeared to be something of an understatement.

Sparrow's evidence was put to Turnbull in connection with the alleged conversation between Turnbull and Sham Maharaj.

Q. [Sparrow] indicates that you asked the inmate what happened and the inmate said, "They beat me." And then you are alleged to have said, "They didn't beat you, you slipped or you fell."

A. When I asked the inmate, sir, when I asked the inmate Maharaj, he told me that he wasn't getting on with the rest of the people in the corridor. And on realizing what his charge was and who he was, I instantly took him out and I put him up into protective custody in 3 annex and then I notified the Chief's office.

Q. You told us that, Mr. Turnbull. I am wondering what your response is to the evidence that you are alleged to have said to this man that he wasn't beaten, that he fell down. You see, this man was allegedly injured.

A. Well, I deny that, sir.

Q. Do you also deny making any statement like hearing the inmate say he slipped on a banana peel and you said, "Oh, that's too bad, you should watch where you are going"?

A. Excuse me, sir, what kind of a man do you think I am, concerning charges like this?

Q. Mr. Turnbull, my personal views do not enter this at all. I am merely relating to you the evidence of Mr. Sparrow and I am giving you an opportunity to comment on them, sir. . . .

A. For one thing, sir, it is that statement that has been made saying that I said such a thing is against any, all or any training that I have ever had in England, in Saskatchewan or even in Ontario, sir.

From the above, Turnbull recognized that the alleged conduct was wrong. He protested that it would have been contrary to all his previous training.

Turnbull was shown the medical summary of Sham Maharaj. This indicated that he was admitted to the Toronto Jail on May 22, 1974. He was examined the next day by Dr. Hill and the doctor's notation recorded that there were no complaints at the time and that he was fit for all activities. On May 28 he was examined by Dr. Dickinson. The note as of that date refers to a "red left eye, some swelling upper lip". There is also reference to a complaint of pain on the right side. Medication was prescribed.

THE COMMISSIONER. From that, Mr. Turnbull, it would appear that after he was first examined, at some later time he sustained some injury. Can you explain that?

A. No, sir, I can't.

Q. All right. He wasn't injured, I take it, when he was in 3 annex because he was there alone. Would that be correct, unless he injured himself?

A. It is in protective custody, sir. . . .

Q. Do you know if he was injured while he was in protective custody?

A. I don't know; I couldn't say.

Q. The evidence of Mr. Sparrow and Mr. Sutherland is, there was an attack on him while he was in 11 corridor.

A. He never told me. He just says he wasn't getting on with the other inmates in the corridor, sir, and when I realized, too, who it was, and when I asked him his name, I brought him straight out and put him into protective custody, sir.

Q. You can't give any reason why Mr. Sutherland or Mr. Sparrow would give this evidence?

A. No, sir.

Q. Or Mr. Dassy.

A. No, sir.

It is difficult to understand and reconcile the two parts of Turnbull's evidence. He said that he and Casey were discussing Sham Maharaj, and the case in which he was involved, when they checked his name on the inmate board. This was before the assault. Then he said that, after Sham Maharaj spoke to him and immediately before he took him out of the corridor, he realized who the inmate was, and, after asking his name, he brought him out of the corridor and put him into protective custody. There is a possible explanation compatible with the two statements, namely, that Turnbull recognized the name but did not attach it to a particular inmate and knew only that it referred to an inmate in the corridor. But that is rather at odds with the evidence of other witnesses about what occurred and what was said.

THE COMMISSIONER. Do you know why, in the first place, with the publicity in connection with his case, that this inmate would be put into number 11 corridor?

A. I don't know, sir, unless they classed it as an immigration [case]. If he is an immigration [case] he would automatically go up to 11, but for the jail, knowing the charges, I am at a loss for any reason why they would put him up there.

Where there is a conflict between having someone in an immigration corridor and having him in protective custody, the protective custody should be the overriding factor, particularly when the corridor is also housing inmates who are not immigration cases. The same principle would apply to non-immigrant cases as between regular corridors and protective custody.

## EVIDENCE OF WILLIAM PAUL STAFFORD

C.O. 2 Stafford was questioned specifically with reference to the conversation that Sutherland said had occurred between them.

MR. BYNOE. That about May 27 and maybe earlier . . . you told Mr. Sutherland

that when a Pakistanian or an Indian child-molester that has now been identified as the person in that photograph that I have just shown you, came into the jail, he says that you, Mr. Stafford, you told him [Sutherland] that you and other guards pushed that man down the stairs and then beat him, and then put the boots to him in the basement. What, if any, comment do you make with respect to that allegation?

A. The only comment I can give to that allegation, sir, is where my whereabouts is in the jail, at that particular time. It was admitted that I wasn't there. I think the log book will prove I was in the new building.

It was therefore the contention of Stafford that since he was in the new building . . . he was not in the area referred to by Sutherland. Further, the weight of evidence indicated that Sham Maharaj was attacked by inmates, and there was nothing in the medical summary to indicate any possible separate attack by correctional officers.

Even if Stafford was "bragging" to Sutherland about an attack on Maharaj by correctional officers, there was no other evidence to indicate that such an assault occurred. One might even hazard the guess that Stafford's conversation with Sutherland was in the nature of "puffing".

THE COMMISSIONER. When you say or use the expression "put the boots to someone" what actually do you mean by that?

A. I have been using that expression, sir, since I was about nine years of age. It is something that we use particularly in the area of Glasgow which I come from. . . . It is pertaining to sports. It is in soccer.

Q. It doesn't mean kicking someone?

A. No, sir. It is just a general term, "putting the boots to him". . . .

Q. You're going to see that he gets into trouble? Is that the expression?

A. Not that he gets into trouble. Put the boots to him. I could say – if I say I would put the boots to that guy, it is not possibly that I am trying to get the man into trouble. It is just that I have used it as a colloquialism. It is just an expression. . . .

Q. You wouldn't have used it to someone you liked?

A. Well, sometimes I have said it.

Q. Jokingly?

A. Jokingly, yes.

Q. All right. Now did you hear that this man was beaten by some other inmates?

A. I heard that, yes, sir.

Q. Did you hear that his offence or alleged offence, had been told to the other inmates by one of the correctional officers?

A. I really don't know, sir.

Q. You didn't know that?

A. No.

Q. Did you hear that?

A. Well, actually when the police came in to interview Sham or whatever his name is, on B landing, I believe it became general conversation in the jail that he had done this, and that he was in the Don Jail. Everybody knew it. This

spreads like wildfire. So consequently . . . most inmates in the corridor would know what that man was.

Q. Yes.

A. And if his name was up on the board, Maharaj Sham, and they read the newspapers, they immediately know who the man is.

Q. Well then, might you again have been referring to this episode not as something that you yourself did but as something that was done in the jail to him?

A. Yes, I could have said the inmates did it.

Q. Or the boots were put to him or something like that?

A. Yes.

Q. Without meaning that you personally did?

A. That is correct, sir.

Q. You see, what I am trying to do, Mr. Stafford, is reconcile your evidence, if at all possible, with that of Mr. Sutherland and Mr. Sparrow.

A. Well, sir, the position I am in, I never at any time remember seeing that man in the jail.

Q. Yes. But if there was general talk about it, it may be that that talk went through the jail and you may have had some discussion of —

A. Could have said put the boots to him, yes.

Q. —with Sparrow or Sutherland. In addition to trying to be, to use an expression, a nice guy, towards inmates who, we will say, behave themselves, did you ever try to create an impression that you were a tough guy for the purpose of getting better compliance with orders? . . . I was just wondering if there might have been anything like that and that Sutherland or Sparrow might have misinterpreted.

A. Well, I don't take too much stock in that. I don't ever do that.

Q. All right. Now you mentioned that you might sometimes, in a good-humoured way, put your foot to someone to push him along.

A. Yes, sir.

Q. If somebody saw that, do you think they might misinterpret that at all?

A. I think it is quite possible for anything at the old jail to be misinterpreted.

Stafford was questioned further by Mrs. Peters with reference to the expression "putting the boots to someone".

MRS. PETERS. When you do use the expression, "putting the boots to someone" do you mean physical action?

A. No, it is a matter of speech.

Q. So you really don't mean applying any physical force to the person?

A. I can say that I have said that to my son, and . . . I don't think I have struck any of my family in my life because —

Q. I don't mean you necessarily intend to carry out the threat.

A. No.

Q. But is it a threat of physical violence?

A. No.

As already noted, Sham Maharaj was unavailable to give evidence. While



on bail, he disappeared. At the time of the Commission hearings there was a bench warrant out for his arrest.

## SHAM MAHARAJ SUMMARY

Reference is made to two alleged assaults on Sham Maharaj, the first by correctional officers on his admission to the Toronto Jail and the second by other inmates while he was housed in Corridor 11. The medical record of Dr. Hill, the day after admission, indicated that there were no complaints by Sham Maharaj and that he was fit for all activities. He may not have been processed in the gentlest manner, but I do not believe, in the light of that medical report, that he was "beaten" by Stafford and other members of the correctional staff, as Sutherland had interpreted Stafford's statement to mean.

Stafford, in his evidence on oath, denied the assault and attempted to give a different meaning to the words he may well have used when speaking to Sutherland. As indicated in the review of this matter, one explanation is that it was quite possible that Stafford was bragging and trying to impress Sutherland. If so, then his so-called "confession" loses validity. Had Sham Maharaj been available to give evidence, the matter might have been more definitively resolved.

As for the attack, there is no doubt that it occurred as a result of Sham Maharaj being housed in Corridor 11. With the publicity that his alleged crime, which was of a most shocking nature, was said to have received in the media, he should have been placed in protective custody from the outset, and not after the almost predictable attack.

Corridor 11 was used in part, at that time, to house immigration cases. Most of these are now quartered outside the Toronto Jail at the Albion Hotel in Mississauga, near to the Toronto International Airport, and at the Strathcona Hotel on York Street in downtown Toronto. Proper security measures are taken at these two places by the Department of Manpower and Immigration, whose responsibility it is to house and feed individuals and families who have been suspected of having broken immigration laws or of intending to breach the same. The accommodation, although termed of the "hotel type", does not fall within any luxury category. It is, however, to be preferred to jail accommodation for persons awaiting immigration hearings. Many of those detained are held for only a short time, pending the posting of a proper bond to ensure their hearing attendance. The Toronto Jail is still used for those awaiting hearing or deportation where, in addition to some breach of the immigration laws, there has also been a crime for which a Canadian citizen might be placed in jail. This explanatory note has been included here by way of showing the change at the Toronto Jail away from the employment of part or all of a corridor, for routine immigration cases. As has been related in the Sham Maharaj allegation, Corridor



11 was used partially for this purpose.

Turnbull admitted that he was the officer on duty. It may have been just a matter of time until the jail grapevine would have identified Sham Maharaj with his offensive crime. The worrisome aspect is that the evidence strongly indicated that the time was foreshortened by the actions of the correctional staff. This may have been a result of an overheard conversation with a fellow correctional officer. Whether the failure to take steps to ensure the confidentiality of information was deliberate or a result of carelessness does not matter. Worse it would be, of course, if the information was communicated directly to an inmate, as was alleged in the evidence of inmate witnesses, who appeared to be unbiased and impartial in the matter. It is with regret that I find, on the acceptable evidence, that I have no alternative but to censure Turnbull, an otherwise conscientious correctional officer, for the part he played both before and after the inmate attack on Sham Maharaj. It is a cardinal principle of criminal law that one who aids and abets a crime is guilty in the same manner as if he were a principal in the commission of the crime. By telling an inmate of a reprehensible crime allegedly committed by another inmate, knowing that such inmate will be assaulted as a result of the information, is no different than directly assaulting the inmate.

# The Grant Allegation

*"I told him to cut his fingernails at first and he said he didn't have to. . . . So I said, 'Well, I'll just pull them out . . . with a pair of pliers.' . . . First of all I told him I would get Mr. Casey to sit on him. . . . He said . . . he'd scream. . . . I said, 'Not with a rag in your throat, you won't.' "* (Gary Dassy)

## EVIDENCE OF GARY DASSY

While giving evidence, Dassy referred briefly to an immigration inmate by the name of Grant. He described him as a "trouble-maker".

MR. BYNOE. Now do you distinguish between an immigration matter for which a man is being held from a criminal charge?

A. Yes, sir. A person on a criminal charge is bound sooner or later to get to court. We can hold an immigration person for the rest of his life, if we so desire.

THE COMMISSIONER. Just a moment. If you so desire – surely jail authorities are not the ones to decide how an immigration matter will be disposed of.

A. That's what I'm saying. I wanted to finish it. The immigration board – he's in there at their discretion, sir. That's what I mean to say, not the jail's.

Q. So that you, of course, as a guard wouldn't have any access to the man's documentation or anything of that nature?

A. I've read some of the immigration appeals and that, sir, that fellows have brought back.

Q. But as part of your duties, though, you wouldn't really have their papers, would you, as a guard?

A. No, sir.

It may be that some immigration inmates require more assistance from social workers than others. No doubt the more routine questions could be answered by informed correctional officers. Dassy stated that, on the board outside the corridor opposite the immigration inmate, would be the reference "Hold - IMM" rather than a "remand date" or "sentence date".

As for the incident itself, Dassy thought it occurred in August.

MR. BYNOE. And what happened with respect to Mr. Grant?

A. Mr. Grant had fingernails on him that were excessively long, on one hand.

Q. Do you have any views that you expressed in that matter?

A. Yes, sir. I told him to cut his fingernails, they were too long. They were approximately up to an inch.

Q. Why would you want his fingernails cut, Mr. Dassy?

A. He sharpened them, sir, and they could be used as a weapon. He sharpened a set of his nails and they were like this [indicating] and pointed. . . . I told him to cut his fingernails at first and he said he didn't have to. When I told him he had to because of personal appearance plus the fact there is a directive in the jail that they must keep their nails at a reasonable length, he still wouldn't cut them. So I said, well, I'll just pull them out.

Q. Did you tell him how?

A. Yes, sir.

Q. How?

A. With a pair of pliers.

Q. What, if anything, did he say to that?

A. First of all I told him I would get Mr. Casey to sit on him. . . .

Q. What, if any, remark did Mr. Grant make to that?

A. He said . . . he'd scream. . . . I said, "Not with a rag in your throat, you won't." And he cut his nails.

Q. Do you know where Mr. Grant was from?

A. I believe it was Jamaica, sir.

Q. Did you feel that threat you made to the inmate was unreasonable?

A. No, sir.

Q. Is there anything you can add with respect to these matters?

A. No, sir.

THE COMMISSIONER. Was there any complaint made to anybody by Mr. Grant?

A. No, sir.

## GRANT SUMMARY

It was not necessary to call any further evidence with reference to Dassy's admission. Once again, his attitude towards inmates was rather proudly

confessed. If Dassy considered that Grant's nails were in the nature of a dangerous weapon, and the inmate refused to trim them, the matter should have been referred to a senior correctional officer. As was brought out during the course of evidence in other matters, Dassy's judgment when it came to the treatment of inmates was not always the best. Dassy's threatened action might have caused a stronger confrontation with the inmate and, if overheard, might have affected other inmates. Fortunately, this was an incident that never developed beyond threats to the use of force. The voicing of the specific type of threat and the thinking behind it might, however, point to a need for more selective recruiting and earlier and more thorough training. That is why this incident has been reported.

# The Nembhard Allegation

*"He was in some kind of catatonic state; hysterical . . . we lifted his arms up and they stayed up in the air when we let go." (Jane Mannerholm)*

*" . . . he was dragged. We didn't put him none too gently on the elevator. . . . We just got into the elevator and let him go. . . . We got up to 1B and we dragged him off the elevator by his heels . . ." (Gary Dassy)*

*"To us it was necessary . . . but then again other people witnessing it would say it was an unnecessary force." (Gary Dassy)*

## EVIDENCE OF JANE MANNERHOLM

This incident was brought to light during the evidence of the nurse, Jane Mannerholm, who said it occurred in July 1974.

She said the inmate was brought to surgery one evening when she was on duty there with Nurse Klein. She said he was brought by C.O. 1 Gary Dassy and C.O. 2 Charles Casey and that C.O. 5 Stanley Johnson came "just after". She recalled Nembhard's name and recognized his photograph.

She was asked about his condition when he was brought into surgery.

A. He was in some kind of catatonic state; hysterical. And we took his blood pressure and pulse and it was normal and his pupils were reacting normally,



and we lifted his arms up and they stayed up in the air when we let go. But when we were pinching him in the ear, his eyes twisted a little bit, but he didn't want to open his eyes, but you could see the movements.

MR. MCRAE. His eyes were closed then?

A. Yes.

Q. Was he walking?

A. No. When we came out he was on the floor.

Q. When you first saw him?

A. Yes.

Q. Would he be described as sort of limp?

A. He didn't move at all, and we couldn't find anything wrong with him. So we told the officers there was nothing wrong with him.

Q. Did you do any medical checks on him?

A. Yes. We took his blood pressure and pulse and see how the pupils reacted.

Q. Now did you get to look at the pupils?

A. With a flashlight. You open the eyes, and it was all normal.

Q. All right. What happened then?

A. So they told him to stand up and he didn't want to. So they grabbed him under each arm —

Q. He was told to stand up by the correctional officer?

A. Yes.

Q. By Mr. Dassy —

A. And Mr. Casey.

Q. What about the lieutenant?

A. I don't remember what he said. I think he may have said something too. And he didn't want to stand up so they took him under each arm, and Mr. Dassy, he put his knee to the right kidney, but it didn't help. They dragged him along.

Q. What do you mean he put his knee to the right kidney?

A. To make him walk but he didn't want to walk, still.

Q. But, I mean, did he apply force with his knee to the right kidney?

A. Yes.

Q. He kneed him in the kidney?

A. Yes.

Q. That's what he did?

A. Yes.

Q. What effect did this have on the inmate?

A. None. He didn't want to walk anyway.

Q. What effect did this have on you?

A. I told him to take it easy.

Q. Told?

A. The officer to take it easy. . . .

When asked to describe the kneeling in the kidney she indicated that Dassy "put the knee right into the kidney with force".

Q. What kind of force?

A. Kicking force with the knee.

Q. Considerable force?

A. I would say so.

Q. Was it at that time you told the officers ——

A. To take it easy.

Q. —— to take it easy?

A. Yes.

Q. Had Mr. Casey done anything to the inmate?

A. I don't recall. He had him under his arm and he shook him.

Q. Shook him?

A. Shook him.

Q. You say that you made an entry in the nurses' book?

A. Miss Klein did. . . .

Q. And the reason for making the entry in the nurses' book was what?

A. To first of all protect ourselves and be able to check up on this.

Q. To protect yourself?

A. Yes.

Q. In case of later hemorrhaging?

A. Yes.

The nurses' book was then shown to Miss Mannerholm. Under June 30, 1974, and opposite the name of Osmond Nembard (sic) was a notation of blood pressure and pulse and the additional observation: "Pupils perila brisk, lay on floor not moving, but blinking when eyes touched. Not talking, holding self stiff. Placed in 1B for observation." The reference to pupils meant that they were normal. There was no notation about the inmate being kned in the kidneys.

Q. You didn't put that in?

A. No, Miss Klein didn't put that in. . . .

Q. Can you tell us whether excessive force was used on that inmate in your opinion and from your observation?

A. Not really. . . .

Q. Well, was it necessary to use force on him at that point?

A. I would think some kind of force had to be applied.

Q. Why?

A. To see if he came out of his state that he was in. . . .

Q. What kind of force would you have recommended as a medical treatment?

A. Maybe pulling his hair or something.

Q. Did you see anything further happen to this gentleman?

A. No, nothing special happened, no.

Q. Did you follow up on it? Did you see him after?

A. I called up to the landing I think once or twice later on and he was all right. . . .

Q. Did Lieutenant Johnson lay a hand on him at all?

A. No, not that I can recall.

Q. Did he say anything when Mr. Dassy put the knee into his back?

A. Not that I could hear.

Jane Mannerholm was then examined by Mr. Carter.

MR. CARTER. Do I gather from what you said, after you examined Mr. Nembhard your view was that there was nothing wrong with him?

A. That is correct.

Q. And that in effect he was faking this state of unconsciousness?

A. That is correct. He was not unconscious, he was fully awake. He was not moving, he was not co-operating. . . .

Q. But he was not responding to external stimulus?

A. He was.

Q. Oh, he was?

A. When I pinched him.

Q. But when you spoke to him he would not return the conversation?

A. No.

Q. He did not let on that he was being spoken to or anything of that nature?

A. No.

Q. And you indicated that – was it after he was picked up by Mr. Casey and Mr. Dassy that Mr. Dassy kneed him on the right kidney?

A. It was after this incident when they took him away.

Q. They were taking him away, all right. Nothing had happened to him prior to them taking him away?

A. Not that I saw.

Q. That you saw, all right. Mr. Casey had ahold of one arm and Mr. Dassy had ahold of the other, I take it?

A. That is correct.

Q. Because he would not move voluntarily, is that right?

A. That is correct.

Q. And you said that Mr. Dassy kneed him in the right kidney?

A. Yes.

Q. And I understood you to say that you made a note in the nurses' record to protect yourself in the event that some hemorrhaging occurred later, is that correct?

A. Ask Miss Klein; she is the head nurse. . . . I believe that Miss Klein put it in the book at that time.

THE COMMISSIONER. Yes, but did you tell us this morning when you were giving your evidence . . . that that was done in the event of some bleeding later on?

A. I suppose I said something. . . .

Q. How does this note protect you against later bleeding?

A. It doesn't protect us at all. . . .

Q. There is no notation . . . about any kneeling in the kidney?

A. No.

Miss Mannerholm stated that she did not see the entry again until the day prior to giving her evidence as she had no reason to look at it. The entry appeared to be originally in pencil and then "written over" in ink. Miss Mannerholm was not able to say why this was done, and it was not in her handwriting.

I do not attach any significance to the writing over in ink, nor do I think it unusual that neither of the nurses made any notation in the nurses' book that Dassy had kneed Nembhard in the kidney. If Johnson, a senior officer, was present and observed the incident, it would have been redundant for the

nurses to complain unless they thought it constituted shocking brutality.

The incident appears from the evidence of Miss Mannerholm to be more a matter of callousness on the part of Dassy than anything else.

Miss Mannerholm had stated that if she had wanted to test the reflexes of the inmate she would have pulled his hair rather than kneeling him in the kidneys. Dassy's knee to the kidney may have been for the purpose of starting Nembhard on his way to 1B. A come-along hold should have been adopted rather than a knee to the kidney, and in this respect the force was not only unwarranted but excessive in the circumstances.

Miss Mannerholm was of the opinion that the matter was not of sufficient seriousness for a doctor to be called. She thought, however, that that would be the responsibility of Miss Klein, the head nurse.

## EVIDENCE OF GARY DASSY

Dassy was questioned about the Nembhard incident. He said he was working on Corridors 9 and 10 when Johnson came and said, "Follow me."

MR. BYNOE. And where did you go?

A. Up to 12 corridor, sir.

Q. What happened then?

A. This inmate was hanging on to the bar doors or just beside the door, sir. . . . Nembhard was standing there with his hands holding on to the bars and looking straight ahead of him, sir. Not moving. Didn't seem to hear anybody. We tried to pry his fingers loose.

Q. Who is "we"?

A. Stan Johnson and myself, and it didn't work.

Q. Yes. Did you see Mr. Casey up there?

A. Casey then asked to be let into 12 corridor. . . . And he put his hands around Nembhard's neck and a knee into the small of his back and started to force him — pull him back.

Q. Was Nembhard inside No. 12 corridor?

A. Yes, sir.

Q. Looking out?

A. Yes, sir. . . .

Q. All right. What happened then?

A. We got a broom handle and whacked his hands.

Q. Who is "we"?

A. Stan Johnson and myself.

Q. Did the two of you go and get one broom?

A. I got the broom and he did the whacking. . . . It was the only way we could get his hands free of the bars.

Q. Did you try to pry them loose?

A. Yes, we had, sir.

Q. Was he able to resist your strength?

A. Yes, sir. Very strong man.

Q. How big would you say he was?

A. I would say he is a fair size man, sir. Maybe an inch or two shorter than I am and very well built.

Q. All right. What happened then?

THE COMMISSIONER. Pardon me. Was he in some catatonic state?

A. That is what we thought, sir, and he was never abused at that time, sir. The only way we could get him to break his hold.

MR. BYNOE. So far as you are concerned the use of the broom by Lieutenant Johnson was reasonable force in your view?

A. Yes, sir. Yes, it was just a rap, a crack across the knuckles.

Q. What effect, if any, did it have on Nembhard, or seem to?

A. He let go of the bars.

Q. Right. What happened then?

A. Mr. Casey and I then got on each side of him with our arms underneath his shoulders. He wouldn't stand. so we dragged him down to surgery, or we had to carry him this way down to surgery.

Q. That would be from the third floor to the second and from the second down to the first?

A. Yes, sir.

Q. What degree of force was used by this time?

A. No force, sir. Just dragged him down to surgery. . . . I remember Miss Klein holding his hand up in the air to take his pulse. and when she finished taking his pulse she let go of his hand but he forgot to drop it.

Q. It just remained in the air?

A. Yes, sir. . . . So they tried some other things with him.

Q. Was Mr. Nembhard standing on his own?

A. No, he was lying on the floor.

Q. On the floor?

A. Yes, sir. On his back. And they said there was nothing wrong with him . . . all the functions were normal of the tests they did. So I got behind him and picked him up. . . . And he was still a dead weight. Mr. Casey was standing in front of him. . . . Mr. Casey stuck his hand out in front of Nembhard's face. . . . Nembhard's eyes were open and Nembhard would follow the hand and Casey would slap him with the other hand.

Q. Slap him where?

A. In the face, sir.

Q. In the front?

A. Yes, sir. Open hand.

Q. Open hand across where?

A. Across the cheek, sir.

Q. The cheek? And did that blow appear to have been the type of blow one would expect if they were trying to bring one to consciousness or was it a blow with a great deal of force?

A. It would be hard to say, sir. It was applied two or three times. Nembhard didn't seem to respond to it. . . . But he was following Mr. Casey's other hand. While he was looking at Mr. Casey's other hand the other hand would slap him



in the face. And then he would drop that hand and put [up] the other one and Mr. Nembhard would turn his head and look at the other hand.

Q. And you were holding on to Mr. Nembhard?

A. Yes, sir. He kept sagging. He wouldn't stand up. . . .

Q. What happened then?

A. I kneed him a couple of times, sir, because he kept — he was just being a dead weight in my arms, and I believe he was — over 200 pounds.

Q. Why did you knee him?

A. Because he kept falling down on me, sir.

Q. For what purpose did you knee him?

A. To get him to stand up, sir. If he was in the state that he was trying to put himself in, he would not have felt my knee and he wouldn't have followed Mr. Casey's hand.

Q. I gather from what you say you brought your knee up on his back for the purpose of making him stand up?

A. Yes, sir. It was in the kidney area.

Q. And you were of the opinion he was emoting?

A. Yes, sir.

Q. Did Miss Mannerholm and Miss Klein see the actions of both you and Mr. Casey at this time?

A. Yes, sir. I believe they did, sir, yes. I believe there was a couple of inmates had witnessed it too, sir.

Q. Do you know their name?

A. One would be Wayne King I believe, sir, and the other one would be the other orderly by the name of Keith, sir.

Q. Do you know by any chance the surname of Keith?

A. No, I don't sir.

Q. What effect did the slaps on the face and the knee in the back appear to have on Mr. Nembhard?

A. None, sir. We asked him if he wanted to go back up to 12 corridor and behave or we would have to take him over to the segregation. . . .

Q. Did he answer?

A. No, sir, he did not.

Q. Did he do anything to signify that he appreciated what you were talking about?

A. No, sir.

Q. All right. What happened next?

A. Well, Mr. Casey and I — Stan Johnson said we will put him over in 1B, I believe it is.

Q. Was Stan Johnson there?

A. Yes, sir. He stood there.

Q. Did he observe the force you applied and the force that Mr. Casey applied to Nembhard?

A. Yes, sir.

Q. What was Mr. Johnson's instructions then?

A. "Take him over to 1B."

Q. To 1B? Did you say anything to Mr. Nembhard at this time or did Mr. Casey?

A. No – we asked him if he was going to walk over. . . . And we got no reply. So we said “We will have to drag you over then if you don’t want to walk.” . . . So we dragged him over, sir.

Q. Was there any undue force applied to Mr. Nembhard at this time?

A. No, except that he was dragged. We didn’t put him none too gently on the elevator. . . . We just got into the elevator and let him go.

Q. You were tired and you let him go?

A. Yes, sir.

Q. So what happened after that?

A. We got up to 1B and we dragged him off the elevator by his heels. . . .

Q. What area did you take him to?

A. From the male elevator around through the back down here, took off the clothes he had on – we didn’t even put baby dolls on him, sir – we put him right into the cell.

Q. He was in there naked?

A. Yes, sir.

An extract from the 1B segregation log indicated the following notation entered by Johnson: “4.55, Osmond Nembhard from 12 corridor, not on punishment – mental – Stan Johnson.”

Dassy said that at supper time he spoke to C.O. 2 Joseph Peake who was on duty in the 1B segregation area. “I asked him about Nembhard and he said there was nothing wrong with the man. He said as soon as he got into the cell he got up and laid down on the bed, sir, and went to sleep.”

Dassy was asked about the force used on Nembhard.

A. I, myself, would say it would be a necessary force, depending on who witnessed it, sir.

Q. It would be necessary?

A. I think it would be. To us it was necessary for us, but then again other people witnessing it would say it was an unnecessary force.

Q. As far as you are concerned, in your view what was done, it was reasonable force?

A. Yes, sir. . . .

Q. No one beat this man?

A. No one beat him, no, sir.

Q. Now is there anything further that you can tell us about Mr. Nembhard? . . .

A. Just that he was back in 12 corridor, sir. About August some time, I think.

Q. He never complained about his treatment?

A. No, sir.

The incident indicated some of the problems confronting correctional officers. If the entry in the 1B log by Johnson was accurate, namely, that Nembhard was “mental” and was not put in 1B as punishment, and all of the evidence indicated that he was non-violent, one wonders why he was not taken to the psychiatric ward of the hospital and kept there under observation.

If, on the other hand, Nembhard was feigning his catatonic state, then the

admission to 1B may have been in the nature of punishment, particularly since he was left without clothing.

An unco-operative inmate can have an effect on morale and unusual behaviour can even be unsettling to other inmates. In such cases removal of the inmate from the corridor may be wise. The decision to place Nembhard in 1B segregation rather than in 1A hospital was, no doubt, based on the experienced judgment of Johnson and of nurses Klein and Mannerholm. Any criticism of the use of segregation in this particular case would constitute an unnecessary restraint on the judgment that must be entrusted to senior officers. It was the log notation of Johnson that posed the problem, for it indicated that the inmate was "mental" and was not being placed in segregation as a punishment.

If Dassy's evidence was correct about the way Nembhard was dumped onto the elevator and dragged to and from the elevator, it might be considered advisable in such a situation to have the inmate escorted, not by two but by four correctional officers and carried to and from the elevator and placed on the elevator floor, rather than being "dragged and dumped".

Undoubtedly the patience of correctional staff is tried by such inmates. Incidents such as this, fortunately not serious in themselves, reveal the attitudes of correctional staff towards inmates, which brings us once again to the question of the selection and training of correctional officers.

If Nembhard was feigning his catatonic state, this may have been due to boredom, lack of a program, or a lack of motivation which could occur no matter what program was provided.

It might help to reduce the privileges of someone acting in this manner, but in the Toronto Jail what could one deprive an inmate of?

## NEMBHARD SUMMARY

The evidence of Nurse Mannerholm was to the effect that it was necessary to use some force to test whether Nembhard was faking his condition. At one point, she expressed the opinion that Dassy had used considerable force in kneeling the inmate in the kidney area. At another time, although she referred to it as "kicking force", she also qualified it as "not really" excessive. She admitted, however, that she would have used other means such as "pulling his hair" to test Membhard.

With at least a suspected medical problem in this case, we have yet another case where it would have been desirable to have a 24-hour medical service at the Toronto Jail. This not having been available, the correctional staff should have consulted the nursing staff and acted under their direction in deciding what form the testing of the inmate should take. Although some force may have been justified in this instance, I consider the amount used by Dassy to have been excessive and therefore unnecessary.

Casey's actions may well have been within the bounds of "testing". As

for Dassy, it was not so much what he did as his manner of doing it. There was also evidence that, after the testing had been completed, excessive force was used in getting Nembhard started towards segregation and in moving him along. Certainly, some alternative method to that of dragging him by the heels could have been used, such as obtaining the assistance of additional officers or the employment of a litter-type stretcher.

# The Bryan Allegation

*"I heard a bunch of screaming and shouting . . . and I came running up. Bryan was standing on his bed with his boots, throwing them at the TV set."*  
(Gary Dassy)

*"I just grabbed his arm, sir. Like, his arm. I just pulled his arm straight and put one hand here and the other on his wrist and just flipped him through the door."* (Gary Dassy)

## EVIDENCE OF GARY DASSY

Dassy's allegation concerning George D. Bryan came to light while Dassy was giving evidence on December 9, 1974. He had referred to the inmate as George Bryant, but from a photograph identified George D. Bryan as the inmate in question. The Bryan allegation also came to the Commission's attention by way of a "read-in". This was a result of an allegation of inmate John Meagher that Bryan had been assaulted by correctional officers. The matter was investigated and statements obtained. The incident is reported in this section of the report rather than in the "read-in" section.

Dassy stated:

- A. I believe I guess I was in the jail 10 days and I was doing 2 and 3 annex.



MR. BYNOE. This would be about April 20th, 1974?

A. Yes . . . I heard a bunch of screaming and shouting and I was down on the second annex and I came running up. Bryan was standing on his bed with his boots throwing them at the TV set.

The television set was mounted high enough in the day room area that, Dassy indicated, an inmate would have to stand on a bench to adjust it. Dassy related that, when he arrived in the area where the disturbance had taken place, an inmate (one Bob Sheehan) told Dassy that "he would go in and calm him [Bryan] down. . . . Well, Bob was a bit of a con artist, sir. He has done that with all the new guards there. He tries to rule 3 annex."

Q. That is his particular domain?

A. That is his domain, yes sir.

Q. Was he housed or quartered in the ——

A. He is supposed to be in protective custody, sir, in 3 annex. . . .

Q. He was out in the general area . . . when you arrived?

A. Yes, sir.

Q. And how would that happen?

A. Because he was mopping the floors, sir. . . .

Q. You let the inmate in? . . .

A. Yes sir, and the next thing I knew Bryan was sitting on his back, I believe it was, with his hands around Sheehan's throat choking him . . .

Q. What did you do?

A. Press the alarm button, sir.

Q. Did you have any guard there to back you up?

A. None whatsoever, sir.

Q. So as far as you were concerned you could not go in?

A. No, sir, I could not. I would have later, knowing how the jail ran. At that time, no. I would not have. . . .

Q. What happened then?

A. Nobody seemed to know where the alarm was coming from, sir. It took about eight to nine minutes to get up there. . . . I finally had to phone down to the Chief's office, sir.

Q. Would you tell us about that, Mr. Dassy?

A. Well, I pressed the button — waited. Sheehan was still being choked and I was looking at my watch wondering where is everybody so I guess I waited maybe five minutes and I finally phoned the Chief's office and I said "I pressed the alarm button. Where is everybody?" . . .

Q. Were you calling or doing anything to tell this fellow Bryan to cease and desist?

A. Yes, sir.

Q. Did it have any effect on him?

A. No, sir.

Q. Were there other inmates in there?

A. Yes, sir.

Q. What were they doing, if anything?

A. Watching.

Q. Is that quite common?

A. Yes, sir. . . .

Dassy could not recall whom he spoke to in the Chief's office. He gave the location of the trouble and a minute later could hear correctional officers coming up the stairs. He said there were eight of them.

A. As soon as I seen [C.O. 2] Tommy Turnbull hit the top of the stairs I threw my keys, I opened the door and threw my keys at Turnbull, went in, grabbed Bryan . . .

Q. All right. And what happened to Mr. Bryan?

A. I picked him and threw him out the door, sir.

Q. How did you accomplish that?

A. I just grabbed his arm, sir. Like his arm, I just pulled his arm straight and put one hand here and the other on his wrist and just flipped him through the door.

Dassy stated that Bryan landed in the day area, coming in contact with Turnbull.

A. I don't know if he hit Turnbull or Turnbull hit him.

Q. With what?

A. With his boot, sir.

Q. So either Turnbull's boot came in contact with Bryan as a result of Turnbull making a move or alternatively Bryan, with the force that he had, came up against Turnbull; one or the other?

A. One or the other. I wouldn't be able to say.

Q. You couldn't say. All right, what happened then?

A. He was taken off to the hole.

Q. In what fashion?

A. Dragged.

I do not believe that Turnbull kicked Bryan. If Turnbull did make contact with Bryan, as was alleged by Dassy, it is possible that, when Dassy threw Bryan out of the corridor, Bryan landed in Turnbull's path. There was also some evidence that it was C.O. 2 Randolph Ralph and not Turnbull that Bryan made contact with after being thrown by Dassy.

Dassy said that he assisted in taking Bryan to segregation.

A. I believe I didn't charge the man but I put down through no fault of his own he should be in custody for his protection.

Q. Why was that?

A. Because I figured the man was a bit — anybody who would throw a boot at a TV set isn't all there.

Dassy said he did nothing more than grab Bryan by the arm and throw him out the doorway.

Q. You did not punch him?

A. Not that I can recall, sir. I was more amazed at him going through the door than anything else.

Q. And you did not kick him?

A. No, sir.

Although Dassy had said that Bryan could have been kicked by another correctional officer, on being questioned further he said that he did not think that this had happened and also that he did not recall any other correctional officers punching Bryan.

Q. He was put in segregation for medical reasons, for his own protection?

A. That's what I put on the charge.

Q. So there really wasn't any disposition of that as a trial?

A. I wouldn't think there would be.

Q. There's nothing else . . . that you can add apart from that?

A. No, except like I say, that alarm button there, I was told afterwards if I ever pressed the alarm button again because of two inmates fighting I'd be the next one to go.

Q. That would indicate to you then that that was not a proper procedure when two inmates were fighting.

A. No, sir. Just pick up the phone when a couple of inmates are going to it.

THE COMMISSIONER. Who told you that?

A. The chief, sir. And I have been told on a number of occasions by all of the chiefs in the jail. If two inmates are fighting and are not killing each other don't bother panicking and pressing the button. Just phone over to the office and they will send somebody over.

It appears that Dassy overreacted in pushing the alarm button rather than telephoning for help. This is an example of a correctional officer being left alone on a corridor without proper experience or training. In a proper training program a correctional officer would be instructed not to allow another inmate to enter the corridor to remedy a situation such as this one, where Bryan was throwing boots at a television set. No doubt the proper procedure would have been to have notified a senior officer, or even a more experienced line officer.

Dassy was correct in not entering the corridor without first divesting himself of the keys or without cover from another correctional officer. It may well be that a senior correctional officer or a more experienced correctional officer might have inquired as to the reason for Bryan's action and then would have taken appropriate steps to remedy the complaint, quieten him down, or remove him from the corridor.

Proper training would also have indicated that it was not necessary to sound the alarm button and that the appropriate procedure would have been to summon help in a less dramatic manner.

In the Misconduct Report, Part 1, Dassy recorded that, "when told to stop by myself", Bryan did so. C.O. 4 Donald McKay, who was the investigating officer, wrote in Part 2, "I feel this man is a bit mental, he was placed in

segregation for his own protection." The hearing before the Deputy Superintendent, Mr. Farquhar, indicated an admission by Bryan that he struck Sheehan. The penalty was loss of five days' statutory remission, which was appropriate for the offence of choking another inmate. Mr. Farquhar made no reference to the "mental" aspect.

If the assessment of Dassy and McKay was valid, then Bryan should have been transferred to the psychiatric hospital wing where he could have been kept under observation, rather than to segregation, until the Superintendent's hearing.

If Bryan was detained in protective custody, he would not, in the normal course, have been deprived of any of the privileges he would have had in 3 annex.

The incident resulted in "judgment calls" by Mr. Farquhar, for which there cannot be any valid criticism since they were made by experienced officers dealing with a situation as they saw it at the time, including presumably a consideration of space available.

As Bryan was subsequently deported and the matter was not one of those originally alleged by Dassy, no further oral evidence was called. "Read-in" statements were subsequently filed, however.

As for Dassy's evidence that Bryan was "dragged" to segregation, this is probably another example of Dassy's tendency to exaggerate.

## EVIDENCE OF JOHN MEAGHER

The relevant part of Meagher's statement, which was taken at the Kingston Penitentiary where he was serving a five-year sentence for manslaughter, was that the incident arose when Dassy ordered Bryan to take his boots off his bed. Bryan refused to do so and Dassy pushed what Meagher referred to as "the goon buzzer". Meagher said that Dassy then opened the door to the cell and grabbed Bryan and threw him out on the floor. Bryan was kicked "all the way down the stairs" and Meagher was able to hear Bryan "hollering". This last is either supposition on the part of Meagher or pure fancy, because he did not have a view "all the way down the stairs". Meagher's evidence elsewhere was not the most reliable. In the Frost incident, for example, he alleged that he was assisting the librarian Mr. Blum, when the evidence of Mr. Blum, which was most reliable and unequivocal, was that he (Blum) was not working on that day. I do not consider Meagher's evidence with reference to the alleged kicking "all the way down the stairs" as credible enough to make an adverse finding against the correctional officers.

Meagher's evidence, however, does contradict that of Dassy as to the initiating factor of the incident, namely Dassy's statement that Bryan was throwing his boots at the television set. Such conduct would also be difficult to comprehend, for television is one of the few diversions for inmates.



## EVIDENCE OF ROBERT JAMES SHEEHAN

Sheehan's evidence was also by way of a filed statement. He stated that he had been in various institutions in Canada during the previous 10 years. From February 1, 1973, he was an inmate at the Toronto Jail "finishing off a federal sentence". He had "spent twenty-one months at the Don". He said that he was treated very well by the staff and that they assisted him "in every way". This, even though he admitted that at times he was "very abusive to some of the officers". He stated that he had, on two occasions, witnessed "brutality". On one of these occasions, which he placed in July or August 1974 in 3 annex, Bryan was involved.

Sheehan said he was working as a corridor man and Bryan became "verbally abusive to the officer on duty". This officer called for assistance and Dassy responded. When Bryan saw Dassy "you could see a look of fear on his [Bryan's] face".

According to Sheehan, Dassy approached Bryan's bed. "Dassy then reached up and grabbed him by the hair and yanked him so hard that he flew through the air and landed out in the corridor. Mr. Dassy then walked over to the inmate, who was lying on the floor, and started kicking him. The inmate was then escorted out of the annex by Mr. Dassy."

This is another example of different versions of the same event. Sheehan mentioned nothing about offering to help Dassy subdue Bryan or about Bryan attempting to choke him. This, however, may be another example of inmates not "ratting" on each other.

Three correctional officers, in addition to Dassy, gave statements with reference to this incident, namely, C.O. 2 Randolph William Ralph, C.O. 2 Thomas William Turnbull, and C.O. 2 Charles Edward Casey.

Ralph confirmed that Bryan was standing on a bed and that Dassy flung him off the bed towards the gate. He also said, "I broke the inmate's fall as Dassy had flung him towards me." This may well be the reference that Dassy made of Bryan coming in contact with what he thought was Turnbull's foot.

Meagher had alleged that Casey, together with Dassy, had assaulted Bryan. It was Casey's evidence that on the night in question he was on duty at the front door of the old building. During conversation with Dassy in the tea room, Dassy had mentioned that he (Dassy) was having trouble with Bryan who had been "setting fires". If this was so it was a serious situation and should have been brought to the attention of senior staff.

In mentioning the setting of fires, Dassy might have been creating an excuse to act against Bryan. If this was so, it was akin to what was claimed to have occurred on another occasion when, correctional officers alleged, Dassy burned pepper outside one of the corridors to simulate the odour of marijuana.

According to Casey, Dassy had even remarked that he would probably have to bring Bryan down later. Casey said that, some time after that, he heard the alarm bell ring and observed Dassy and "a few other guards" coming down the stairs with a black inmate and that this inmate was being



restrained by Dassy. He said that Dassy, on returning from segregation, told him that he had taken Bryan to segregation. Casey denied having had any contact with Bryan.

If Casey was stationed at the front door of the old building, it is most unlikely that he would have left his post to respond to the alarm. I therefore believe that Meagher was implicating Casey without proper justification.

## BRYAN SUMMARY

With reference to the oral allegations of Dassy, the only correctional officer who could justifiably be found guilty of misconduct was Dassy himself.

# The Lumley Allegation

*“... the inmate was just annihilated.” (Gary Dassy – unsubstantiated reference to Steven Lumley)*

*“Q. When you struck your blows you think he was unconscious? Is that accurate?” A. I would say so, yes, sir ...” (Gary Dassy)*

*“If I had stayed there and not participated they would have said something to me to the effect, why did you stand there and watch this without giving us a hand. Therefore they would figure that I could possibly be adverse to this type of activity and therefore maybe think that instead of working for the Don Jail I was working for Queen’s Park, maybe, sir.” (Gary Dassy)*

*“Well, people have their bad days and they have their good days, and I’ve got some of my own bad days.” (Steven Lumley)*

*“Q. The record shows that is was his [Dunning’s] day off, so regardless of what time it occurred he could not have been there, isn’t that right? A. That is right, sir ... Q. If you are mistaken about that, you could also be mistaken about Mr. Chaplin? A. True, sir. Q. Or any one of the others? A. True. Except for one, sir [Curry].” (Cross-examination of Steven Lumley by Mr. Carter)*

The investigation of this incident was prompted by an allegation made by

Gary Dassy. The evidence was contradictory. Indeed, although Dassy asserted that he was personally involved, the evidence indicated that he had not participated to the extent that he claimed. As for the allegations of inmate Steven David Lumley, most of the correctional officers named by him were not present in the jail at the time of the alleged assault.

## EVIDENCE OF GARY DASSY

Dassy related that an inmate from Sarnia arrived at the Toronto Jail in the "Blue Goose". Dassy said the Blue Goose was a bus belonging to the Ministry of Correctional Services that was used to transport inmates from one institution or jail to another.

Dassy's evidence was that the incident occurred in July, 1974. "I was down in the shower area with an inmate that was either having a fine paid or going out on bail." Dassy stated that he saw another inmate (later referred to as Steven Lumley) with a group of correctional officers around him. "He was in jail blues, so he had finished showering." Dassy said that the inmate had been in the county jail in Sarnia. He indicated that he did not know the inmate by name. Among the correctional officers present, he said, were C.O. 2 Robert Simpson, C.O. 2 John Turff, C.O. 2 John Ferguson, and two others.

Dassy said: "The unknown inmate [Lumley] said to these guards that he had been in every institution or – yes, every institution in Canada, and that the Don Jail didn't frighten him one bit. He said this in the presence of other inmates, and with that it started, sir."

Dassy was asked to describe "what started", and rather dramatically he answered: "Punching, kicking. Who threw what or anything, the inmate was just annihilated." He said he was three feet away when this occurred. "I seen what was going on and the inmate I had with me, I have no idea where he disappeared to."

When asked if he participated himself, he answered, "I believe I threw a punch or two at him too, sir." If this was true, then Dassy's conduct was unnecessary and unacceptable for, according to him, the inmate was already being controlled and Dassy was not involved earlier in any confrontation with the inmate and on his own admission joined in the fray. However, his statement "I believe I threw a punch or two" is not a strong statement and, in light of other evidence to the effect that he did not participate and was in fact some distance from the scene, one wonders what his motive was for attempting to have himself included in the alleged assault. Was it a case of Dassy wanting to be "front row centre" in a matter in which he was only peripherally concerned?

Later in his evidence, Dassy stated that the inmate "was being held up" and that he, Dassy, "hit him, probably twice I think sir . . . with my fist, sir."

MR. BYNOE. What degree of force did you use?

A. Fair degree of force, sir.

Q. What effect, if any, did it appear to have on the inmate?

A. None whatsoever at the time.

Q. Why?

A. He was by the looks of it pretty near – well, he was maybe unconscious, sir.

Q. When you struck your blows you think he was unconscious? Is that accurate?

A. I would say so, yes, sir. . . .

THE COMMISSIONER. Where did you strike him?

A. In the stomach area, sir.

If the inmate really had been unconscious at the time when Dassy claimed to have struck him, then not only was his action unnecessary, unwarranted, and unjustifiable, it was also sadistic. Dassy seemed to be quite pleased with himself when giving this evidence.

A. Ferguson was going at him with both fists in the face. Mr. Turff was using him as a punching bag; just driving him.

Q. You are moving both hands.

A. Both hands. Just like a steam engine. Both hands were just going.

Q. That was Mr. Turff?

A. Yes, sir.

Q. And the blows, did they appear to be landing?

A. Oh, yes, sir.

Q. And whereabouts, can you recall?

A. From the waist up, sir.

Q. Right. Can you recall anything else that Mr. Turff did?

A. The inmate was kicked.

Q. Do you recall who kicked him? Or did you see?

A. I can't recall who kicked him. This is quite a narrow passageway, but you could see the boots landing in the face, stomach, and groin area.

Dassy described the passageway where this occurred as being 30 inches to two feet in width, although he agreed that, according to a plan of the area that was filed, it was four feet.

Dassy stated that it was after the correctional officers released the inmate that he hit the ground, and he said that that was when he was kicked in the face. As for the actions of Simpson: "Mr. Simpson was hitting him, too, sir, in the face and in the body; in the back. He was being punched all over – about the same, you know, all three, four or five were all hitting him at once, sir."

He explained why he would hit an inmate when he was probably unconscious: "Well, because of the attitude that he had when he said – because he said it in front of other inmates which would then give other inmates ideas that the Don Jail reputation had changed, sir. And if he had gotten away with it, [and] other inmates had seen it, they would try the same thing."

He also stated: "You have to realize that I stood there and watched what

happened. If I had stayed there and not participated they would have said something to me to the effect, why did you stand there and watch this without giving us a hand. Therefore they would figure that I could possibly be adverse to this type of activity and therefore maybe think that instead of working for the Don Jail I was working for Queen's Park, maybe, sir."

THE COMMISSIONER. Well, I could understand that reasoning on your part if it was a matter of this inmate against one guard alone, but it doesn't seem that they required your assistance, nor were you in charge of this inmate.

A. No, I was not, sir. I don't recall who was in charge of this inmate. . . .

Q. You see, the reason why I differentiate this incident from some of the others is, in the others I understand that you were either in charge of the inmate or you were called to assist, but here you did not have either of those reasons?

A. No, sir, and I believe the other guards did not also, sir. The only one that would be in charge at that time would be Mr. Simpson. Mr. Turff was a photographer. He should have been in photographing the inmates. Mr. Ferguson I believe at that time was in search. . . .

Q. Well, you don't know how it came about that there were five guards about this inmate when you first noticed the situation?

A. No, I don't sir.

Concerning Dassy's comment that Turff should have been in the photography area, this area was also in the basement of the old building and not far from the shower and search area. The correctional officer who admitted being involved in an altercation with Lumley was C.O. 2 Samuel Curry. It has been shown earlier (the St. James allegation) that Curry strongly resembled Turff.

According to Dassy, the inmate, as a result of his alleged assault, had become incontinent while unconscious and soiled his clothing. Dassy said that he had last seen the inmate lying on the floor. That was just before he took the inmate who was in his charge over to the new building.

On cross-examination by Mr. Carter, Dassy admitted that he was not fully aware of what had transpired earlier.

MR. CARTER. So you don't know what caused them to surround him or anything of that nature?

A. Except that he had said that he had been in every institution —

Q. Did you see him when he said that?

A. No I didn't, no. This is what I was told by other guards.

Q. You didn't see anything prior to his being surrounded by officers?

A. No, sir.

As for punching the unconscious inmate, Mr. Carter inquired whether Dassy was requested to do this by anyone.

A. It was expected of me, sir. As I told you once before, I have a position in that jail and if I am not fulfilling that position other guards can see and they are going to wonder why. . . .



Q. So are you telling me then on every occasion when you see something like that it is expected by the other officers that you will join in?

A. Yes, sir.

Dassy used as justification for this philosophy the incidents in which he was assisted by other correctional officers. This situation, however, was entirely different. Undoubtedly there are situations where a correctional officer would be expected to go to the assistance of a fellow officer, for example where he is outnumbered in a physical confrontation, or where it is necessary to defuse and control a situation, but certainly not where enough correctional officers were already present and the inmate had been effectively subdued.

Dassy admitted to Mr. Carter the unnecessary nature of his purported action against Lumley.

Q. You rendered your blows after he was already unconscious?

A. I presumed he was unconscious. He was still standing up but with the help of an officer holding him up.

Q. Well, I think you said on two occasions earlier that when you struck your blows he was unconscious?

A. I am saying I thought he was unconscious. I don't know if he was. This is only my opinion.

Q. All right, and your blows would have no conscious effect on the inmate; that is . . . he wasn't going to benefit from your blows. He wouldn't know about it. Is that correct?

A. That's correct, sir. He was put on the floor and the boots were put to him then, sir.

Q. So was there any reason for your administering the blows?

A. No.

## EVIDENCE OF STEVEN DAVID LUMLEY

At the time of giving evidence on April 17, 1975, Lumley was 17. He was born in Ontario and was living with his family. Despite his record, he impressed one while giving evidence as a polite young man, well brought up.

He had been lodged in the Sarnia jail in July 1974 and was being transferred to the Ontario Correctional Institute at Brampton. He was asked whether this was a result of difficulties or behavioural problems in the Sarnia jail, and he indicated that it was a result of his classification. He was serving a six-month sentence for 10 counts of false pretences and an additional two months for failure to appear. He had earlier served some time in the Sarnia jail in connection with possession of a narcotic. The penalty was \$200 or two months, and he spent the two months in jail.

As had been brought out in the evidence of Dassy, Lumley was being transported in the Ministry's bus, known as the Blue Goose. It turned out

that the bus made stops on the way from Sarnia to the Toronto Jail, one of them being in Brampton. But Lumley was taken on to the Toronto Jail.

This was in line with the practice of bringing in to the Toronto Jail behavioural cases from other jails and institutions while they were *en route* to other institutions. It would have been more sensible to deliver Lumley directly to Brampton when the bus stopped there, rather than bringing him to Toronto, causing the Toronto Jail authorities to go through administrative procedures, and then transport him back to Brampton.

Lumley identified six correctional officers as being involved in the episode in the admitting area. Some of these officers were not on duty at the time. I do not think Lumley purposely made allegations against officers who were not involved. I think that he was mistaken, even to the point of possible carelessness. The time of giving evidence was approximately nine months after the event and, as has been shown in connection with other inmates, errors were often made in identifying correctional officers.

The identification was not a line-up, but from photographs that were reasonably good likenesses, and in some cases inmates even gave correctional officers' names. Nevertheless, this constituted one of the Commission's difficulties.

Lumley indicated that the incident was precipitated by one of the correctional officers who was walking through the admission area. "Well, the officer that was walking through – I didn't quite catch all of what he said, but he said: one of us – using slang language he was – excuse me – using the expression a [deletion]. . . . Well, when he walked through he said that one of us – I don't know if he was talking to me or the other guys . . ."

If Lumley's evidence was correct, fault lay with the correctional officer who demeaned an inmate unnecessarily by passing the alleged remark. Lumley identified this correctional officer as C.O. 2 Samuel Curry.

A. Sam came back and picked me up by the collar of the shirt and threw me – not threw me, put me up against the wall and said: "We have a smart one here."  
MR. BYNOE. What, if anything, did you do?

A. I answered him: "Yes, sir."

Q. What happened after that?

A. He let go and walked towards the search area and I sat there waiting for my turn to go through.

Q. What happened then?

A. I took a shower.

Q. Had you been searched at that time?

A. Yes, sir.

Q. And you put on your old clothes?

A. Yes, sir.

Q. Did you get into the shower room?

A. Yes, sir.

Q. You took a shower, and then did you receive new jail issue?

A. I did, sir.

Q. Did you get dressed?

A. I got dressed in everything except for my shoes, and they asked me if I was

ready.

Q. Who asked?

A. Sam. . . .

Q. They opened the gate?

A. Yes, and I walked – walked into the corridor. There was – I’m not sure, maybe four or five guards standing behind, one at the end of the corridor, and I walked through.

Lumley stated that as he walked through the corridor he was struck in the stomach with a “closed fist” by C.O. 3 Arthur Chaplin. Chaplin would have been wearing a white shirt. Lumley, when asked, indicated that Chaplin was wearing a grey shirt. More important was the discrepancy between the time Lumley arrived at the Toronto Jail and the time of Chaplin’s signing out. According to the evidence presented, Chaplin was not on duty when the incident occurred.

Q. What happened after you were struck?

A. After I was struck I fell to my knees, and I felt a foot hard against my – against the inside of my left shoulder. . . .

Q. As a result of the kick what if anything happened to you?

A. I fell onto my right side and I just covered my face. . . .

Q. Now were you frightened at that time?

A. Yes, I was, sir. I was more than frightened; I was terrified. And I wet my pants because I was so terrified. . . . Mr. Curry literally jumped up off the ground and onto me.

Q. How did he do that? Would you describe it please.

A. Well, the best way to describe it I guess is like a high jump. He got up off the ground – he jumped up off the ground and onto me.

Lumley indicated that Curry landed on his legs and left ribs with his feet. He described Curry’s footwear as black rubber-soled shoes. Lumley stated that there was no conversation up to that time.

Q. What happened then that you can recall, after Mr. Curry landed on your ribs and your side?

A. One of the other guards said, okay, that is enough.

Q. Do you know who said that?

A. No, sir, I don’t. All I heard was somebody saying that.

Q. What happened then?

A. Mr. Curry was not too pleasant with it and he tried to jump on me again and one of the other guards pulled him so he would not land on me.

Lumley identified the correctional officer who pulled Curry away as C.O. 1 Leroy Moore. Lumley said that no one other than Curry and Chaplin struck him and that Moore was successful in preventing Curry from jumping on him a second time. Other evidence showed that Moore did not start his employment at the Toronto Jail until some four months later.

Next, he said, Curry “bent down and literally picked me up by the hair. He

said, 'Stand up, get up,' and I got up and I was pushed against the wall." Then he was grabbed by the throat by a correctional officer whom he identified as C.O. 2 Peter Anson, and he said that Anson banged his head against the wall three times. Lumley stated that the effect of this was to make him dizzy but that he did not lose consciousness. He then walked on his own to the stairs and up the stairs leading to Corridors 7 and 8. "I just walked upstairs and I was put into the bullpen or the holding cell on the first floor."

Lumley was then questioned about Dassy's evidence.

Q. At any time from the time you entered the jail until you entered that bullpen, had you been rendered unconscious?

A. No, sir.

Q. At any time before you entered the bullpen which you have just referred to, did you see [Dassy]? . . .

A. He was standing at the top of the stairs, sir, when I came up the stairs.

Q. Is that the first time that you saw him?

A. That is the very first time that I ever saw him, sir.

Q. Specifically then, is it your evidence that you did not see Mr. Dassy in the hallway area where you have described this assault, where this assault upon you took place?

A. Yes, sir.

After being in the bullpen area for about five minutes he was taken to the doctor's office and was seen by Dr. Dubelsten. He related that Dr. Dubelsten looked at the abrasion on his shoulder and asked how he obtained that.

A. I did not reply, sir. I just sat there.

Q. Were you asked a few other questions about your past health?

A. Yes, sir, I was. . . .

Q. Did you complain to the doctor that you had been beaten by the guards?

A. No, sir.

Lumley stated that he was in segregation for three days. The segregation log indicated that, on the second day, he was taken to surgery and returned 15 minutes later. He said he had not asked to see a doctor. The photograph he identified as showing the doctor was that of Hans Zoeller, a medical technician. He stated that this man also looked at the abrasion on his shoulder.

A. He asked me where I got it from.

Q. What did you tell him?

A. I told him where I got it from. . . .

Q. Did you tell him that a guard had assaulted you, kicked you or jumped on you?

A. I didn't put it that way; just that I was assaulted . . .

Q. And then you will agree with me that you didn't say whether you were assaulted by some other person, or some other inmate, or a guard?

A. No, sir, I did not say that.



Lumley stated that on July 28 he was taken out of segregation and "shipped to O.C.I.". He recalled that on the 27th he had been seen by the Assistant Superintendent.

Reference was then made to a Misconduct Report. The description of the charge was that Lumley attacked another person within the institution and conducted himself in a manner detrimental to the institution's welfare. The reporting officer was Curry and he related in Part 1 that while escorting Lumley from the admitting area Lumley attacked him at the foot of the stairs leading to Corridors 7 and 8 saying, "I am passing through this [deletion] box, and I am going to have a good time, so let's get on, brother."

Curry stated that Lumley then punched him in the chest and right arm, knocking off his glasses. Curry stated that he called for help and Harrison, who was in charge of the showers, arrived. Together they subdued Lumley and took him to surgery.

Curry reported sustaining a bruised right arm and a broken fingernail and attached an accident report to the Misconduct Report. In the accident report it was stated that after Lumley was received from surgery he was placed in segregation. Curry also stated that Lumley appeared to have a very aggressive and immature attitude towards staff members and also a violent nature. "I respectfully suggest that this be borne in mind with regard to Lumley's placement in any institution program."

Lumley agreed that the Assistant Superintendent, Mr. Mulhern, read Part 1 of the report to him, but he denied that it was true. The investigation was conducted by C.O. 4 John Patterson, who reported that, when he interviewed Lumley the same day, Lumley adopted a "very aggressive attitude" and said, "You guys are a bunch of [deletion]." There was a further notation by Patterson that male nurse Robert McLean informed Patterson that Lumley was very obscene in surgery.

Mr. Mulhern's summary of Lumley's account of the incident was that Lumley was verbally but not physically aggressive and that he did not like to fight. The penalty was "indefinite segregation, behaviour pattern to be reviewed daily".

A separate report, filed by Harrison, indicated that Lumley also used obscenity in the shower area. He confirmed that Curry was punched in the chest.

From the above it appears that Lumley's polite attitude at the inquiry was something he had acquired since his entry into the Toronto Jail, or, at any rate, was different from his attitude at that time.

When transferred to O.C.I. on July 30, Lumley was seen first by a registered nurse and then by a Dr. McCurdy. He stated that the nurse did not speak to him about any bruises or abrasions. A week later he was seen by a Dr. Douglas, whose report indicated that he had complained of pain in the left ribs to Dr. McCurdy, and Dr. Douglas thought from his examination on August 7 that there was a "possible crack fracture" of a rib. It was further stated that "in view of claim that this was done by guards, he should have an X-ray". Two days later an X-ray was made and it was negative.

Dr. McCurdy's report on August 1 indicated: "Claims to have been



kicked by guards at Don Jail. Complaints of pain over left lower ribs." Dr. McCurdy noted some question of tenderness over the ribs but no other signs of bruising. There was a further notation: "I would query this claim. Appears fit and healthy."

Lumley was asked about Dassy's evidence and he denied that Dassy had struck him or that he was unconscious. He also denied having been kicked in the face, and stated that "it was in the shoulder". He confirmed Dassy's claim that he was also kicked in the stomach, but denied that he was kicked in the groin. He also denied Dassy's allegation that he had an involuntary bowel movement, but agreed that he had urinated in his pants.

Lumley said that Curry's attitude was, "Give it to him now and he won't bother you any more." Lumley was asked why he did not reply to Dr. Dubelsten's questioning as to how he came by the abrasion on his shoulder, to which he replied, "The only reason I did not answer was because I was afraid of getting worked over again." He said there were a couple of correctional officers standing outside the room and the door was open and they were within hearing distance.

It is suggested that the medical staff's oral part of the examination of an inmate who shows evidence of recent injury should have confidentiality, and, unless the inmate poses a physical threat to the doctor, conversation between the doctor and the inmate should be out of earshot of any correctional officer.

In answer to questions by Mrs. Peters, Lumley said that the only bruising he saw after the incident was to the upper thigh of his left leg. He did not look to see if there was any bruising on his shoulder since it was not bothering him, the thigh being the only part of his body that hurt, and the thigh hurt until he was transferred to O.C.I. He stated that he did not mention the thigh to any doctor because "it didn't really concern me at the time".

Lumley also mentioned being involved in a fight with another inmate at O.C.I. and that he "couldn't breathe". As a result of that he put in a request to see a doctor and he said it was Dr. Douglas who told him that he had a hairline fracture of the rib and then arranged for X-rays. He said that in the fight at O.C.I. he was struck in the face and he indicated that he did not receive any injury to his ribs at that time.

As to the possibility of Dassy being involved, as Dassy had alleged, Mrs. Peters asked whether Dassy might have walked by him while he was on the floor without his noticing, when he was covering his face. Lumley said that this was possible.

In the cross-examination by Mr. Carter there was a discussion about the time of the incident, the estimates varying from 2:30 to 3:46. This was relevant in that Chaplin had signed out at three o'clock, and if Mr. Carter's recounting was correct Chaplin was not in the jail at the time of the alleged occurrence. If Lumley's time was correct, there was an unexplained gap between his entry into the jail at 2:00 and his entry into segregation at 4:09.

With reference to C.O. 2 Reginald Dunning, also identified by Lumley, the attendance register indicated that the occurrence took place on one of his days off.

MR. CARTER. The record shows that it was his [Dunning's] day off, so regardless of what time it occurred he could not have been there?

A. That is right, sir.

Q. So you are mistaken about that, are you?

A. It looks like it, sir.

Q. If you are mistaken about that, you could also be mistaken about Mr. Chaplin?

A. True, sir.

Q. Or any one of the others?

A. True. Except for one, sir. [Curry]

With reference to Moore, Mr. Carter brought out the fact that Moore was not employed at the Toronto Jail until later in the year. Lumley agreed that he must have been mistaken about Moore as well.

Despite these admitted errors, Lumley was most definite about Curry being the one who jumped on him. "I am not going to have anybody change my mind because it is the truth. He is the one who jumped on me."

It was also Lumley's evidence that, when Mr. Mulhern held his inquiry on July 27, three officers were present who were also alleged to have been present at the time of the alleged assault. They were Curry, Anson, and Casey. Mr. Carter also showed that Anson was not on duty at the time of the morning hearing and Casey was having a day off. Mr. Carter summarized his submission: "My submission, quite frankly, will be, Your Honour, that this man lied about this; that he lied about the fact that it [the O.C.I. fight] aggravated his injuries; that he lied about telling the doctor that; because it could not happen the way he says."

In support of this contention, Mr. Carter referred to a Misconduct Report at O.C.I. about a fight there in which Lumley was involved. Mr. Carter alleged three inconsistencies. Lumley tried to explain them away on the grounds of a time gap and of a poor memory.

Mr. Carter inquired as to Lumley's feelings about being sent to the Toronto Jail, to which he replied "not so hot". He said that the Blue Goose picked up various people on the way from Sarnia.

Q. And had there been discussions on the way down about going to the Toronto Jail?

A. Yes, sir, there was.

Q. You knew that is where you were going?

A. No, I didn't, sir. I didn't know where I was going at that time. Nobody said anything from the Sarnia Jail where I was going.

Lumley, being sent out of the Sarnia Jail without being told where he was going or why, would be tense and worried and this could cause problems for the correctional officers at the institution where he would arrive, even if it was only for a short stay.

Proper communication can allay suspicion and mistrust, give a person greater interest, and even flatter his ego by the confidence. It can also be a

deterrent to the spreading of false rumour and wild speculation.

Unless there are cogent security reasons to withhold such information, it should be given to inmates, particularly when it might affect visiting arrangements.

Q. You were from the Sarnia area. Am I right?

A. I'm from the Sarnia area, yes.

Q. I suggest to you you were a little unhappy about going anywhere except Sarnia.

A. That's correct, sir.

Q. You got on the bus with a resentment that you were being moved. Isn't that right?

A. That's right, sir. I didn't make anything of it, sir. I didn't say a word. . . . I didn't really have anything to say on the bus, or really when I got to any of the jails.

Q. How long did it take from Sarnia to Toronto?

A. I have no idea.

Q. What is your best estimate of time?

A. Two days.

Q. Where did you stop over?

A. Outside Windsor . . .

Q. Now I suggest to you, really, that all the time you were on that bus you were just steaming angry about having been moved from Sarnia.

A. I have to disagree with you, sir.

Q. You were angry?

A. I was angry. I was not steaming. I was not really off my rocker – in other words, like some people say, or really hot under the collar. I was just mad because like I had guys in Sarnia that I knew and were really good friends of mine.

Q. And you were being taken away from all these people?

A. Right.

Q. And you wound up in the Toronto Jail?

A. Right.

Q. I suggest to you once that you found that you were in the Toronto Jail your anger just took right over.

A. It didn't, sir.

Q. You deny that, do you?

A. I deny that, sir.

Q. I suggest to you that once your anger took over you really weren't very rational, and you started to get into the ruckus with the officers in the search area?

A. No, sir, I deny it.

Q. Now it was read to you that an officer had a bruised right arm, and a broken fingernail.

A. That's correct, sir.

Q. And you denied causing those injuries?

A. I deny it because I didn't fight back.

As for Mr. Curry's injuries:

Q. They certainly could have been incurred in the struggle with you?

A. That's right, sir. I didn't fight back.

Q. You didn't touch anybody?

A. I didn't touch anybody. I had no reason for fighting, sir. That was one thing – and that's something I'm strongly against. I was saying to my father just a couple of nights ago if a man lived by one rule – one rule! Do unto others as you would have them do unto you, then there wouldn't be any fights, wars, or anything.

Q. You don't generally fight. Is that what you are saying?

A. That's right, sir.

Lumley admitted that there was some attempt at a concerted plan by those on the Blue Goose prior to arriving at the Toronto Jail. "The guys were hinting at the idea of keeping your mouth shut, and not saying anything to the guards, and these were the guys on the bus. Just before we arrived there, they all said: 'Keep your mouth shut and don't say anything.' "

Although Lumley excluded from this conspiracy of silence "the necessary things you have to give", the Guelph Blue Goose incident may have gone past this point to a conspiracy not to answer any question.

The route of the Blue Goose was given as follows, in a monthly vehicle report: Sarnia, Windsor, London, Stratford, Guelph Jail, Guelph Correctional Centre, Brampton, Mimico, and then the Toronto Jail.

The same report indicated that the vehicle arrived at the Toronto Jail at 3:00 p.m. and Lumley admitted then that he was wrong in saying 2:00 p.m. He agreed that the incident would have occurred sometime between 4 and 4:30.

Mr. Carter's cross-examination was directed to showing that if Lumley was maltreated as he alleged he would have been sore and tender in the area of the seventh rib and yet he made no complaint to the jail doctor that day, nor to the medical technician when he was X-rayed the next day, although he said he had no recollection of the X-ray shown in the medical records.

Lumley indicated that his politeness while giving evidence was not a recently acquired thing. "I have been this way, with politeness, ever since I can remember. I was in Sea Cadets and I was in Navy League Cadets and I learned my politeness from there and also from home."

THE COMMISSIONER. You have admitted that you were verbally aggressive when you were on the hearing before Mr. Mulhern.

A. That is correct.

Q. Well, that seems to be something different than the actions of the polite person, is it not?

A. Yes, sir.

Q. Was there something that was bothering you that day?

A. The only thing that was bothering me was, I was in jail and not out on the street. It also got me mad that I was shipped out of Sarnia, because I could have spent the time in Sarnia, just as well as anywhere else.

Q. You don't know why you were transferred out of Sarnia?

A. No, I don't, sir. They just put me on the bus and I went to Toronto and then to OCI.



Q. There was no explanation?

A. No explanation, no, sir.

Q. When did you first learn that you were going to OCI?

A. I put a request in for a telephone call and my probation officer come over and he was talking to me about this phone call. And I asked him if he knew where I was going to be going, if I was going to be shipped out, and he said perhaps OCI, probably. I didn't really think too much on it, because I thought I would stay in Sarnia.

Q. Now was this conversation with your probation officer while you were still in Sarnia?

A. Yes, it was.

Q. And he didn't explain it to you?

A. No, he didn't. The superintendent of the jail didn't explain it to me, my probation officer didn't explain it to me. I asked the guards about it at OCI and nothing was said.

Q. Was there any recommendation by the court that you appeared before that you should serve your sentence at OCI?

A. Not that I can remember, no, sir.

Q. How long were you in the Sarnia Jail before you were transferred out of it?

A. Three weeks.

In view of certain earlier questions and answers, Lumley's pre-sentence report was filed and the assessment of the probation officer contained therein was as follows: "The offender is a 17-year-old youth on probation to the Court for auto theft. His over-all response to probation supervision has been indifferent and he has failed to maintain steady employment or a fixed residence. This offender has very little conscience and avoids the truth whenever possible. Present offence is a deliberate one not prompted by any financial need or extenuating circumstances, and his response to his behaviour is extremely impersonal and disturbing. It is obvious that probation has not helped this youth and the prognosis for his future is very poor."

A copy of a psychiatric report at O.C.I. was filed. It read in part: "I saw him as a discipline problem in need of direction, guidance and confrontation. In the structured group inter-reaction he claimed that many of his difficulties can be traced to his impulsive and stubborn behaviour."

MR. CARTER. Did you say that?

A. Yes, I did sir.

Q. Is that true?

A. That is true, sir.

Q. A paragraph here: "He sees his positive characteristics as liking sports, and getting along well with people, and his negative characteristics as mouthing off some times."

A. That is correct, sir. Very true.

Q. Well, is that consistent with what you told the Commissioner a few minutes ago about your always having been polite and the like?

A. I don't understand what you mean by that.



Q. Well, if your negative characteristic is mouthing off sometimes, that is a little bit different from always being polite, co-operative, with persons, isn't it?

A. Well, people have their bad days and they have their good days, and I've got some of my own bad days.

Q. "... in spite of his professed altruism, he seems to be disillusioned and derogatory towards people and feels hard done and persecuted by them".

Is that correct?

A. That was correct, sir.

Q. That would be correct in July and August of 1974?

A. That is true, sir.

With reference to Lumley's self-assessment, he seemed to be quite candid and in his disturbance over having been transferred from Sarnia to Toronto may well lie the precipitating cause of the incident.

There were some facts that augured well for Lumley's future rehabilitation, and considering his age he is one of the young men who may well be favourably influenced by a positive rehabilitation program.

In connection with incarcerated witnesses who appeared before the Commission, one would have to be realistically pessimistic as to the rehabilitation of many, but I was optimistic about the rehabilitation of others and then there were a number who were borderline, walking a rehabilitative tightrope, just as likely to fall off as to reach the winning pole at the end.

Lumley might be classified in this third category. It is the people in this group whom it is so important to win over, and small things such as the manner in which they are handled, their accommodation, and their treatment at the Toronto Jail may tip the scale either way.

It is the importance of succeeding with these people that makes the proper recruiting and training of correctional officers so necessary. This may well turn out to be the central theme of the recommendations of this Commission – to save for themselves, for their families, and for society this third group, and to save the community the burden of keeping them in jails and penal institutions.

The following excerpt from the transcript may therefore be relevant.

THE COMMISSIONER. Mr. Lumley, I am rather impressed with the observation made here in which you are described as a bright if somewhat impatient young man who recognizes his problems and is motivated to change. Aside from this episode that happened in July of last year, certainly it would appear to me that you could help yourself; you recognize your own shortcomings, which is something people a lot older than you sometimes have difficulty in doing. You are now living at home again, are you?

A. That is right, sir.

Q. According to this report you come from a good family. You are now working in construction, are you?

A. That is right, sir.

Q. Do you like that?

A. I do, sir, very much.

Q. Well, I certainly hope that you have come to a point where you realize that you can help yourself to become a good citizen.

Mr. Bynoe, having had the benefit of the statements given by witnesses to the Commission investigators, anticipated the evidence of Harrison and Curry, and put this evidence to Lumley while he was in the witness box.

MR. BYNOE. With respect to language, it is going to be alleged, I believe, by correctional officer Harrison that when you were in the shower area placing your clothes on the counter, that Mr. Harrison asked you to hand in your clothing sheet, a blue sheet, and he alleges that you replied, and I quote: "Oh for [deletion] sake, here." Did you say that?

A. No, sir.

Q. It will be alleged, I assume, by Mr. Curry, that when he was escorting you from the shower area in the admitting section of the old jail, and he says that you became aggressive towards him and then he said, or he alleges that you said, and I quote: "I am just passing through this [deletion] box and I'm going to have a good time, so let's get on with it, brother." Did you say that?

A. I deny that, sir.

The above was substantially repeated by Harrison and Curry when they were on the witness stand. The evidence of these correctional officers is also consistent with the probation officer's pre-sentence report and the psychologist's report on Lumley's problems at that time.

It is against all reason, as well as being unsupported by any evidence with reference to this or any other incident, that Harrison and Curry would, without provocation, react in the strong and physical manner that had been detailed by Dassy and Lumley. This does not mean that, with the tensions of the job, correctional officers might not lose their tempers and without fear of reprisal might not react in a somewhat physical manner.

The evidence, however, of the correctional officers, as will be detailed, was that there was a prior physical assault by Lumley. I do not think that Lumley, if his verbal aggressiveness had been ignored, would have participated in any physical aggressiveness. Whether there was such physical aggressiveness is a matter of credibility.

At any rate, one can see the acceleration in this and other instances which start with verbal abuse, or imagined verbal abuse, initiated either by an inmate or a correctional officer, followed by the other's reaction. Where there is no backing down, this verbal confrontation may develop into threatening gestures which may then be interpreted as a physical threat demanding a defensive manoeuvre, and, when such a defensive manoeuvre is taken, it may not be just such force as is necessary to repel, but may be a more positive and aggressive force. This appears to be the pattern when physical force has been applied by an inmate against an officer, or vice versa.

The recognition of this problem is very important, but merely to recognize it is not sufficient. It is also necessary to make sure that it is brought to the attention of correctional officers in their training program.

## EVIDENCE OF DR. PETER ALEXANDER DUBELSTEN

Dr. Dubelsten recognized the photograph of Lumley. He said that there was no record of the time at which he saw Lumley. It is suggested, that since time of an examination may become relevant in the investigation of an incident, it should always be entered as well as the date.

From the medical entries, Dr. Dubelsten confirmed that he had asked if Lumley had any complaints and that Lumley had made none. "Then I proceeded with a physical examination and the next line reads that Mr. Lumley requires dental work. Then I observed that he had superficial skin abrasions in the region of the left anterior, upper anterior chest wall and shoulder. . . . Otherwise in good physical health."

Dr. Dubelsten did not make an entry as to what he considered to be the cause of the abrasions.

THE COMMISSIONER. Could they be consistent with an assault by some third party?

A. I have to be frank with you, Mr. Commissioner, I just don't really know.

He said that there was nothing in his entry as to bleeding.

MR. CARTER. Now if an abrasion had occurred within 15 minutes, would you expect to find oozing?

A. I would certainly expect some oozing, yes.

Q. If there had been some oozing would you have made a note of that?

A. Absolutely, sir.

Q. So would your note of the injury be consistent with [it] having occurred within 10 or 15 minutes of your examination?

A. I wouldn't say that.

Q. You would not say that? I take it they would not be?

A. They would not be, that is right.

THE COMMISSIONER. We were told that Mr. Lumley was lying on the floor and someone jumped on him wearing shoes or boots. Would you have expected to have seen signs of greater severity of injury . . . under those circumstances . . . than what you saw?

A. Yes. . . .

Q. Doctor, something else that has occurred to me, and that is that on the 1st of August, which would be some six days after your examination, when Mr. Lumley was transferred to the Ontario Correctional Institute, there was a complaint made by him of rib injury, and there was a possibility of some tenderness over the ribs. If that occurred on the 25th of July, might it have been something that did not manifest itself at the time of your examination which may have taken place a short time, within half an hour of the specific events?

A. It is possible.

Q. Sometimes these things become more evident ——

A. A few days after. . . .

Q. And would that be the case, say, with discolouration or bruising?

A. Discolouration and bruising as well.

From the evidence, medical and otherwise, oral and in the form of reports, it appeared that, if injury was received by Lumley in the incident complained of, it was not of the serious nature one would have expected from an attack by correctional officers of the severe kind described by Lumley. In any event, it was certainly not the "annihilation" of which Dassy spoke.

## EVIDENCE OF CLEMENT GEORGE HARRISON

C.O. 2 Harrison was on duty in the shower area. He related the obscenity mentioned elsewhere (and denied by Lumley) and also stated: "His attitude to me was verbally aggressive, as if he had some chip on his shoulder."

Harrison's first knowledge of any problem was when he heard "a shout for help".

MR. BYNOE. Do you know who was shouting? Did you recognize the voice?

A. Not at that time, I would not know whose voice it was.

Q. What did you hear, do you recall?

A. I heard just scuffling, a bit of cursing, blimey, et cetera, a sort of a shout for help. I immediately, as this is part of your duty, and having nobody in the shower area at that moment, I locked the door, unlocked the gates, and ran out and I saw Mr. Lumley and Correctional Officer Curry fighting or brawling at the bottom of the stairway [leading to Corridors 7 and 8]. . . . I saw Lumley hit Mr. Curry in the chest.

Q. With what?

A. With his fist. . . .

Q. And both men were on the ground when this blow was struck by Lumley?

A. Yes.

Q. What else did you observe?

A. I observed that Mr. Curry's glasses had been knocked on the floor.

Q. Where were they?

A. Just lying on the ground there.

Q. On the ground, right. Did you observe anything else?

A. No, I went immediately to Mr. Curry's assistance and I helped to ——

Q. What did you do?

A. I grabbed him by the arm.

Q. Who?

A. I grabbed Mr. Lumley by the arm. . . . And assisted Mr. Curry to bring him upstairs.

Q. What was going on when you grabbed Mr. Lumley by the arm? Did you



say anything to him?

A. I might have said, "Cool it," or something like that. That is general procedure when you try to calm things down a bit. . . . At that time he stopped struggling [and] we got ahold of him. I just grabbed him with as much force as I thought could control a man and with the help of Mr. Curry we got him upstairs.

Q. After you grabbed Mr. Lumley by the arm, did he continue to struggle?

A. Not too much, no.

Q. What if anything did Mr. Curry do to Mr. Lumley?

A. What I see of it, it was Mr. Curry got the worst out of it, sir.

Q. What if anything did you see him do? I am not suggesting that anything was done.

A. I did not actually see Mr. Curry – all I seen was the two of them fighting, not really, just wrestling and fighting, that was all.

Q. Did you see Mr. Curry punch Mr. Lumley?

A. No, I did not.

Q. Did you see Mr. Curry kick Mr. Lumley?

A. No.

Q. Did you kick Mr. Lumley?

A. I did not, sir.

Q. Did you punch Mr. Lumley?

A. No, sir.

Q. Were there any other correctional officers in the immediate vicinity at that time?

A. No, sir.

Q. Did you see Mr. Curry at any time jump on Mr. Lumley while he was lying on the ground?

A. No, sir, I did not.

## EVIDENCE OF SAMUEL CURRY

As for Curry, he confirmed orally his earlier written statement, adding that Lumley had jumped on him with his feet, which is the same allegation that Lumley made against Curry. He related in his statement the obscenity towards Harrison which he had overheard, and he confirmed it orally.

Mr. Bynoe then questioned him on the statement and his oral addition.

MR. BYNOE. And then you go on: "He punched me in the right arm, and chest, knocked off my spectacles." Is that right?

A. He landed on me with his feet and knocked me to the ground, my glasses came off then and then he was punching me on the floor.

Q. Now, again, in the statement, you say, "He punched me in the right eye"?

A. Yes sir.

Q. There was no mention that he jumped on you with his feet, is that correct?



A. That's correct, sir.

Q. Also in Part 1 of the Misconduct Report, there is no mention of the inmate jumping on you with [his] feet, is that correct?

A. That's right, sir, there isn't.

Curry continued his evidence as follows:

A. When he [Lumley] was clothed and collected his towel I said to Mr. Harrison that I would escort him in the same fashion as I had the previous inmate and I took him in this route to these stairs and to send him up the stairs. . . .

Q. Would you tell us then what happened from the time you started walking with Mr. Lumley from the area at the male clothing counter?

A. Sir, he made impure remarks as we left – disparaging remarks.

Q. And do you recall any?

A. Not in particular, sir, in general he was not too happy about being in jail and . . . was letting everybody know about it. I then escorted him, walking behind him.

Q. Were you holding him?

A. No, sir, I was four feet behind him. . . . And Lumley started on up the stairs. I called up to the guard in 7 and 8 saying that there was another one coming up. Lumley got up about four or five stairs, which would make it three or four feet above me, and I was turning away to return through here.

Q. You were turning to your right?

A. Yes, to my right, I believe.

Q. So your left side would be exposed to him?

A. Right.

Q. What happened?

A. He made some remarks . . . I forget the exact wording but in effect what he said was that he was not here for a long time but for a good time and could we get it on. I understood this to mean that he wanted to fight. . . . And he jumped from the fourth or fifth stone stair of this stairway in my direction feet first.

Q. Was he wearing boots?

A. Yes, he was wearing regular jail boots and carrying a towel. He still had a towel in his hand.

Q. Can you advise us whether the boots were tied up or not?

A. I believe they were.

Q. Are the shoelaces issued with the boots?

A. Yes, they are, sir. Boots come with the laces in them.

Q. Is it quite common for the inmates to walk around with boots unlaced?

A. Sometimes they do, sir.

Q. You indicated he made a statement that you related and he jumped at you feet first, is that right?

A. Right, sir.

Q. What happened then? Did he have any contact with you?

A. Yes, sir. He hit me quite heavily in the chest area.

Q. What with?

A. With his feet first.

Q. All right, then what happened?

A. As I say, he came at me in a javelin fashion, landing on me. When he made this remark to me, I turned back, it is an automatic reaction when someone speaks to you, you turn back. He landed squarely on my chest. I did manage to get one arm up and he also hit my forearm, that would be his left foot, and his right foot hit me in the chest.

Q. Were you wearing glasses?

A. Yes, sir, I was.

Q. Do you normally wear glasses?

A. Yes, I normally wear them.

Q. You have indicated that he struck you in that fashion. What effect if any did it have upon you?

A. It knocked me completely flat on the floor, sir. . . .

Q. Now then, what if anything did you do or say or Mr. Lumley do or say?

A. As I hit the floor, sir, my glasses went flying off on the floor, and this guy was shouting and began to punch at me lying on the floor. He and I started to fight.

Q. What was his position when he started to punch you?

A. He kind of landed on his knees, sir. I hit the floor first and he followed after and was kind of straddling me and punching at my head. . . . As my glasses were gone I considered that I needed help, and this was an unexpected attack, and I had lost a lot of breath from my body due to him hitting me in the chest and I was not in too good shape to retaliate for the first 10 or 20 seconds. The only thing I could do was to shout and I shouted, I believe, "Guard up, guard up," which is the regular way of attracting the guard's attention. I did this maybe three or four times.

Q. Then what happened?

A. Mr. Harrison came out from the shower area, following the same route through the grille, getting a hold of Lumley's arm and dragged him off me.

Q. During the course of your struggle did you have occasion to apply any force to the person of Mr. Lumley?

A. Yes, sir, I struck him several times in the chest.

Q. What with?

A. With my fist.

Q. You say he managed to drag Lumley off you. What happened then?

A. I rolled over to my left and picked up my eye-glasses and put them back on and then I went to Mr. Harrison's assistance. Mr. Lumley then had changed his target to Mr. Harrison.

Q. Then what happened when you went to his assistance?

A. It was very easy for two of us to overcome him. We grabbed an arm each and I grabbed his hair so he could not bite me, turned his face away from me, and we carried him kicking and struggling all the way up those stairs to the 7 and 8 landing. . . .

Q. Now then, what happened when you reached the top?

A. We rounded the top of the stairs from this direction and proceeded in towards the medical area here. I left Lumley sitting on a bench in this area here [surgery area]. . . . I left him there in Mr. Harrison's custody, sir, and I

proceeded through the dome to the Chief's office to notify him of the attack and pick up a misconduct sheet.

Q. Do you recall the name of the Chief that was on at that time?

A. I believe it was Sergeant Patterson, sir.

Q. What did you then do?

A. I then noticed that my left middle finger had the fingernail partly torn off, and was bleeding, so I then washed this off in the [kitchen area]. . . . I went back to the surgery to have a piece of tape or something put on as it was bleeding onto the report sheet, and I didn't want to make up a report sheet with drops of blood all over it. . . . Lumley was still sitting there and Mr. Harrison had left. . . . Lumley was fairly quiet at this time. There was lots of other guards – as I say, three or four around the area.

Q. And you say he was fairly quiet?

A. He was still ———

Q. By that you mean he was not yelling?

A. He was not yelling.

Q. Or his attitude had changed?

A. He seemed dejected and he sat in this fashion, head down.

Curry said that he later spoke to male nurse McLean. "He said that as far as they could tell he was not injured and not showing any signs of having taken any . . . drug substance to account for his strange behaviour."

Curry stated that he took Lumley to segregation.

Q. Were you holding onto him?

A. No, sir, I was standing very close behind him, but I was not holding him.

Q. What happened after that?

A. On the way over he spoke to me and he did in fact apologize and said he hoped this would not affect his remission or his chance of being transferred as soon as possible to Brampton.

Q. What, if anything, did you reply to that?

A. I said that I could give no guarantee that that would in fact be the case as it was out of my hands.

At the elevator he met Turff whom he asked to accompany them to the segregation area and there was no further incident.

Curry also said that only Harrison and he were involved in the struggle with Lumley.

Q. At any time did you see Mr. Dassy strike Mr. Lumley?

A. No, sir.

Q. Did you see any officer kick Mr. Lumley?

A. No, sir.

Q. Specifically did you see any officer kick Mr. Lumley in the face?

A. No, sir.

Q. Do you know of any reason, Mr. Curry, why Mr. Lumley would, after acting in the manner you said he acted and after apologizing to you, as you indicated, on the way to segregation, why he would later make these accusations

against you that are very serious and that you say are untrue?

A. No, sir, I have no idea why he would do that.

Q. Mr. Dassy, in his evidence, Mr. Curry, indicates that he was present when Mr. Lumley was beaten and Mr. Lumley was beaten into an unconscious state and that he names Mr. Turff, Mr. Ferguson and Mr. Simpson as being three of five officers involved in the alleged beating. Did you at any time see Mr. Turff, Mr. Ferguson or Mr. Simpson apply any force to the person of Mr. Lumley?

A. No, sir, I did not.

Q. You were not named by Mr. Dassy as taking part in this beating that he alleges he saw. Did you have any reason to either be friendly with Mr. Dassy or to believe that he would have any animosity towards these other officers and not against yourself?

A. Not really, sir. I can only say what I have already said regarding Dassy, that he and I were not friends, we were not friendly. To the best of my knowledge I never worked with the man.

Curry specifically denied grabbing Lumley or making the alleged remark, "We have a smart one here," and he further denied jumping on Lumley with his feet.

Curry was questioned about the site of the struggle and he said that Lumley and C.O. 2 Robert Simpson were wrong in saying that it occurred in the corridor before the tunnel was reached.

THE COMMISSIONER. Could you give any explanation as to why Mr. Simpson would refer to that area?

A. Sir, I don't see how Mr. Simpson from the position he said he was in, which was further down the tunnel, could accurately say where it happened within three or four feet. And it seems to me this is the distance in question sir, bearing in mind that I had been knocked back flat on the floor, sir, maybe travelling backwards that distance.

The site of the struggle was one of the discrepancies in the evidence, this time between two correctional officers. The discrepancy was of some importance, for it cast doubt on Curry's statement that Lumley was part way up the stairs when he turned and attacked him.

Even considering Lumley's alleged agitated state, it appeared to be an unusual action for him – to start to ascend the stairway on his own and then without provocation to turn on Curry in the alleged manner.

Simpson was one of the union stewards at the Toronto Jail and I found his evidence in every instance to be worthy of credence. Taking all of the evidence into account, as well as the probabilities of the occurrence, I find it difficult to believe that the attack by Lumley occurred at the place and in the manner alleged by Curry. If Lumley did attack Curry in the corridor, why did Curry not so testify?

I accept Harrison's evidence, that when he arrived Curry and Lumley were struggling on the floor and that Curry's glasses had been knocked off, but I find difficulty in coming to a satisfactory conclusion about whether it

was Lumley or Curry who initiated the struggle. There may well have been fault on both sides.

The Workmen's Compensation application form filed on behalf of Curry contains the notation, "inmate attacked me" and then, in answer to a question as to "history of accident" and "state exactly where accident occurred" the following appears: "Attacked by inmate outside shower of old jail, kicked in arm, punched in chest."

MR. CARTER. Is that information that you had placed on the original form?

A. I believe it was, sir, yes.

The above lends further weight to the attack having occurred in the corridor leading from the shower area and not at the stairway. Further, if the attack had occurred on the stairway leading to Corridors 7 and 8, or at the bottom thereof, and Curry had called "Guard up, guard up" as he alleged, or had in any other way summoned help, one would have expected the correctional officers on the landing outside Corridor 7 to be the ones to come to Curry's assistance, rather than Harrison who was in the clothing and shower area.

In answer to Mrs. Peters' questioning, Curry said that when Harrison arrived he dragged Lumley off Curry. Curry then put on his glasses and grabbed one of Lumley's arms and his hair. According to Curry, Harrison then held the other side of Lumley. Lumley was then taken up the stairs and to surgery. Curry admitted striking Lumley, but only when he was struggling with him.

MRS. PETERS. Did Mr. Harrison strike him?

A. He probably did, yes ma'am.

Q. Did you see Mr. Harrison strike him?

A. We were wrestling and punching at the guy. He was wrestling and punching at us before we managed to grab an arm each.

Q. And how long did this wrestling match take?

A. Oh about 30 seconds.

Q. So what you would have us believe, Mr. Curry, is that you did not say any words to provoke this man?

A. No, I didn't.

Q. You didn't say anything to him at all?

A. I don't recall saying anything to him, no.

Q. You didn't say anything to Mr. Harrison with regard to Mr. Lumley?

A. No.

Q. He walked down the corridor towards the stairs four feet in front of you?

A. Yes.

Q. There were several guards on the landing of the stairs?

A. I believe there were.

Q. Mr. Harrison was in the corridor behind you, he was at the desk?

A. Behind the counter, yes.

Q. Right. You were four feet behind Mr. Lumley?



A. About four feet.

Q. You said nothing to him to provoke him?

A. Nothing.

Q. He walked up four steps?

A. Yes.

Q. And for some unknown reason he turned around and said something to you and jumped on you?

A. I don't believe the reason was unknown. Apparently he was very upset at being in the Toronto Jail, this may have been reason enough.

Q. What were the words he said to you?

A. Something like — passing through this place, let's get it on. Which I understood meant that he would attack me and he did.

Q. And he said these words when he was on the stairs, did he?

A. As he went up the four steps he then turned around and jumped on me.

Q. Don't you think it was rather strange behaviour for someone who was in a jail, full of guards, with four guards on the landing ahead of him and two guards behind him, to suddenly attack you for absolutely no reason at all?

A. Yes ma'am, I do. A lot of Mr. Lumley's behaviour is possibly strange.

Q. And then you did not even report the incident accurately in your report?

A. Perhaps I am not the most accurate person at reporting immediately after, on paper anyway. . . .

Q. . . . And it was actually Mr. Lumley who had never seen you before that day, had he? Were you familiar with Mr. Lumley?

A. Not before that day, he would not have seen me, no.

Q. He was the one that named you as the person who was involved in the beating?

A. I said I had an altercation with Mr. Lumley, certainly.

In answer to Mr. Carter, Curry indicated that there had been about 10 inmates on the bus and that Lumley was the last, or almost the last, to be processed.

## EVIDENCE OF ROBERT SIMPSON

On July 25, C.O. 2 Simpson was working in the shower area. This was a regular assignment and he had been working in that area for approximately four years.

Simpson indicated that he would come in contact, in the shower area, with approximately 5,000 inmates a month.

With reference to the Lumley incident, he stated that he was "putting clothing away down the hallway" in one of the rooms off the basement tunnel when he heard shouting. He was unable to ascertain who was shouting, but he came out and went towards the shower area where he found a

couple of officers and an inmate in the passageway that led from the shower area to the basement tunnel. He recalled that one of the correctional officers was Harrison.

MR. BYNOE. What did you see when you got there?

A. Well, they were trying to handle this guy, that was being quite awkward with them, and they managed to subdue him, and took him upstairs.

Q. Did you participate in this at all?

A. No, I just returned to the clothing room, I had left it open.

He disagreed with Harrison and Curry as to the location of the altercation. He denied the allegation of Dassý that he was involved and when asked why Dassý would make such false accusation against him he replied,

A. I suppose he did not like me.

Q. Did he ever do or say anything.——

A. I was involved with Mr. Dassý on a case regarding Sergeant Wilson. . . . He wanted to lay charges and he wanted to do it through the union. I was the steward of the union. and nothing came of it at that time. Maybe that was his reason.

Q. Are we to gather from that, Mr. Simpson, that you adopted the view or took the position that was contrary to the position that Mr. Dassý took?

A. Yes.

Simpson also disagreed with Lumley's evidence that more than two correctional officers were involved.

## EVIDENCE OF PAUL JOSEPH MULHERN

Mr. Mulhern, the Assistant Superintendent, presided over the misconduct hearing of Lumley. His evidence confirmed the written part of the Misconduct Report which has already been referred to.

A. I found him guilty of the misconduct of striking an officer, and of using profane language, and sentenced him to an indefinite segregation, but taking into consideration, as I recall his age, and the fact that he gave me something, some reason to be somewhat upset, and the fact that he mentioned that he claimed; what was he doing in Toronto Jail, when he was supposed to be elsewhere. I felt, while he was going to do indefinite segregation, I felt I wanted his behaviour to be monitored on a daily basis.

MR. BYNOE. I think the record indicated some three days later, he was transferred to O.C.I.?

A. As I understand it, he was, sir.

Q. Did Mr. Lumley complain to you that he had been assaulted by correctional officers in your institution?

A. He did not, sir.

Mr. Mulhern indicated that he did nothing to accelerate Lumley's transfer to O.C.I.

THE COMMISSIONER. I am just wondering, in view of this indefinite segregation and the fact that he was to be transferred, whether it would not be advisable to have him transferred to O.C.I. where his behaviour problem could be dealt with in a treatment atmosphere as quickly as possible, rather than have to have him on your hands?

A. In fairness to my superiors, I would presuppose that the date for his transfer to O.C.I. had already been established, which would account for his transfer on the Monday morning.

Q. Yes. At any rate, you did not look into that?

A. No, I did not, sir.

## LUMLEY SUMMARY

I find that there was a fight between Lumley and Curry. Dassy's version of what occurred, the number of correctional officers involved, the seriousness of the attack, and his own participation are rejected. I further find that the only other correctional officer who took an active part in the incident was Harrison. This officer, quite properly, responded to Curry's call for assistance. He was required to use some force to help restrain and control Lumley. I make no finding that the force used by Harrison was excessive or unjustified.

I am of the opinion that both Lumley and Curry sustained some injury during their struggle. I accept Dr. Dubelsten's evidence that the only visible injury to Lumley consisted of abrasions to his left upper chest and to his shoulder. The complained-of rib injury was just as consistent with a subsequent inmate fight at O.C.I., as with an incident at the Toronto Jail, if not more so. The lack of any other significant injury negated the evidence given by both Dassy and Lumley as to the severity and nature of the attack.

I find that the initiating factor in the fight between Lumley and Curry was the hostile and aggressive attitude of Lumley and his use of obscene and abusive language. The proper course of action for Curry would have been to place Lumley on charge. I am of the opinion that Curry, instead of doing that, responded in some physical way. This was countered by Lumley with physical action and the fight was then on. I do not accept Curry's statement that, suddenly and without any apparent reason, Lumley "jumped him" from the fourth or fifth step as Curry was about to return to the admitting area. Curry's initial use of force, although it may have been verbally pro-

voked and/or triggered by Lumley's hostile and aggressive attitude, was not justified. I find it impossible, however, to assess the extent of such initial force or to separate it in degree from the subsequent force used by Curry to repel or attempt to control Lumley's counterattack. Curry's secondary force (in point of time) was justified on the grounds of self-defence.

## The Bowins Allegation

*"... he said, 'Look, nurse, I don't have any bruises now,' and then with all the officers around I knew something was going on." (Nurse Jane Mannerholm)*

*"A. About two days later ... two detectives wanted to see me. ... They asked me about this inmate and if I seen him punched and so on ... and I said I haven't seen anything at all. Q. That was not true? A. No." (Nurse Jane Mannerholm)*

*"I went down backwards, head first, upside down, and I landed at the bottom of the stairs." (Michael Bowins)*

*"There were a lot more guards there then, so finally I just got an arm loose and I just hit the first person who was there." (Michael Bowins)*

*"And as I came out of there, if it please the Commission, I walked into what I might call a can of worms ... everybody was lying sort of at the bottom of the stairs ... and Bowins was struggling with the other officers and doing a pretty good job. As I approached, I said nothing, and basically what I meant to do was to make a grab for a foot. I did not grab it fast enough, I got it in the groin ... throwing me back against the wall and into the cart which is used to convey dishes ... back to the kitchen." (C.O. 3 Arthur Kennedy)*



# EVIDENCE OF JANE CHARLOTTE MANNERHOLM

Nurse Mannerholm made reference to an incident that involved an inmate identified as Michael Bowins.

She stated that as she came through the tunnel leading to the old building and up the stairs to 7 and 8 landing, one day early in the spring of 1973, she saw "an inmate standing up at the top of the stairs with about six officers around and at least one white shirt". As she passed, the inmate said, "Look, nurse, I don't have any bruises now."

A. I looked around and the officers I suppose were aggravated that he was talking to me, and I saw somebody punching him but I continued walking.  
MR. MCRAE. Who punched him?

A. I don't know who punched him, and I can't identify the officers. . . .

Q. Was anybody punching him as you were coming up the stairs before he made that comment to you?

A. Not what I saw. . . .

Q. How many times did you see him punched?

A. Once.

Q. How do you recall this incident so clearly?

A. That is where he said, "Look, nurse, I don't have any bruises now," and then with all the officers around I know something was going on.

Q. Did something happen shortly after that that brought it to your recollection as well?

A. Yes, about two days later I was up on the female side in the jail, and I got a call that two detectives wanted to see me, so I went over to the Chief's office. . . . They asked me about this inmate and if I seen him punched and so on. . . . And I said I haven't seen anything at all.

Q. That was not true?

A. No.

Q. All right. Did you give a statement to that effect?

A. No, they never asked for any. . . .

Q. How did you then identify the inmate which complained as being Bowins?

A. Michael Bowins had told them that he saw me, and I recall the incident and I know Michael Bowins. He has been in jail as long as I have been there.

Q. You know him?

A. Yes.

Q. You just simply said you didn't see any force being used on Bowins at all?

A. Yes.

Q. Was there coercion on you — did anybody put any coercion on you or force you to say that? Why would you say that when it wasn't true?

A. Well, if you squeal on somebody, you are out the door within two seconds, for one or another reason.

Q. What do you mean by that?

A. They would fire you.

Q. Who would?

A. One of the senior staff.

Q. Well, that is a fairly serious accusation, now. Would you tell us why or what you base that on?

A. If you tell somebody that you have seen something, they don't like that, and the officer would get hostile towards you and ——

Q. Other correctional officers?

A. Yes, and it won't be easy to work with them.

Q. That is quite a different thing than being fired.

A. And then they will put the word through up to the senior staff.

Q. On what do you base that?

A. I have seen a few fired.

Q. A few?

A. A few nurses fired, and it doesn't seem to be any reason for their firing.

One day they are not there any more. They have been fired.

Q. Was there any senior correctional officers present with the detectives when you spoke to them?

A. Yes, it was Lieutenant [C.O. 5 Stanley] Johnson was there.

Q. Was he present during the interview?

A. He was walking back and forth.

Q. Well, he wasn't really present?

A. No.

Q. It was an interview between you and two detectives?

A. Yes.

Q. Any further explanation you can give us for why you denied seeing this?

A. I think that covers it all.

The investigation was an independent investigation by the Metropolitan Police into an allegation of assault. Such an allegation, whether it occurs in the Toronto Jail or elsewhere is, of course, an allegation of a criminal act and it comes within the purview of the Police Department.

There are difficulties in such an outside investigation, where all of the witnesses are usually either inmates or correctional staff. It is rare to have an independent witness who is not in one of these two groups, and in the category of correctional staff I include the nursing staff.

The fact that there was an outside investigation, whether by the police or the Ministry's investigation branch, would make it very unlikely that the investigators would allow anything approaching duress or influence to affect the statement of a witness. As much precaution as possible should be taken to ensure that witnesses are not tempering their evidence in any way out of a false sense of loyalty. Also where there is such an investigation, interviews should be conducted in private. In this case, the suggestion by Miss Mannerholm that her evidence was influenced by the proximity of Johnson, a senior correctional officer, would have been avoided. In any case, her insinuation was not supported by other evidence.

As for Miss Mannerholm's statement that she had seen a few nurses fired and her inference that their dismissal was as a result of reporting assaults by correctional officers on inmates, on being questioned further she mentioned only two nurses who were dismissed. and she then revealed that both of

these were dismissed for other reasons.

This is an example of the ease with which both Dassy and Miss Mannerholm would make accusations which, on being probed further, often were not fully substantiated.

Not only did Miss Mannerholm admittedly lie to the investigating detectives, if her story of witnessing the alleged assault was correct, but on cross-examination by Mr. Carter she stated that she did not speak to anybody about the incident. She said that the correctional officers who were present told her to go away. She was unable to identify them. Although there was a doctor on duty at the time, she did not report the matter to him.

Although the nursing and social service staff do not have a training course such as the correctional officers undergo, it is suggested that they be given a set orientation course, with a prescribed syllabus, to familiarize them with the geography of the jail, with the problems of inmates and correctional staff, and with duties incumbent to their office. This latter should include the reporting of all suspicions of assault either by inmates or by correctional officers.

I accept that Bowins made the alleged remark to Miss Mannerholm. As for whether the remark provoked a punch by a correctional officer, this remains in the realm of speculation, particularly in view of the time gap (over a year and a half), the fact that Miss Mannerholm made no report, and the fact of her denial to the detectives.

Miss Mannerholm said that the first person she told about the Bowins incident was Dassy, in July or August 1974, and that she later gave the information to Miss Kaye Fulton of the *Toronto Star*.

## EVIDENCE OF MICHAEL RICHARD BOWINS

At the time of giving evidence Bowins was 23. He was 6'2" in height and weighed 180 pounds. He left school at Grade XI. He admitted that he had some trouble with the law as a juvenile and his record continued after he was 16, involving breaking, entering, and theft charges. In March 1973 he was arrested on charges of breaking and entering and he spent the next nine months at the Toronto Jail.

He was remanded weekly, which would entail going in and out of the Toronto Jail on each occasion until his trial date of December 6, 1973. It was on that date that the incident occurred (and not earlier in the year as related by Miss Mannerholm).

Bowins stated that he remembered getting ready for court that morning.

A. Well, it was just a regular thing with breakfast, and everything. Right? And then we were called up by name to go downstairs and go in the paddy wagon. We were standing there.

MR. MCRAE. Standing where?

A. At the front of the dome. That is the screen at the top of the cement stairways. You stand in line there more or less because . . . it takes a while to get everyone out, and to move around, and things like that. We are standing waiting for the rest of the people to come out.

Q. Are you dressed in civilian clothes?

A. Yes, sir. . . .

Q. You are indicating that as you were standing in line you could look into the dome and see a young inmate standing at one of the professional counselling booths?

A. That's correct, and he was standing there with — I believe all he had on was a pair of jeans and a Don Jail T-shirt, and no shoes or socks or shirt, or anything. He was standing there with his toes, knees and nose touching the wall. They do that to young people, for whatever reason, I don't know. It is kind of a mild torture. You have to stand there . . .

Q. Did you know this inmate?

A. No, I did not.

Q. He was a stranger to you?

A. That's right. I talked to whoever was beside me, Dietmar Stoffers. . . . I pointed and brought to his attention what they were doing to this kid.

Q. Did you say anything that could be overheard?

A. Well, I said, "Look what they are doing. That's a kind of stupid thing to do." I thought it was stupid at any rate. When I was doing that, this guard came up.

Q. You indicated while you were pointing at the inmate —

A. Yes, this guard came up and grabbed my arm, grabbed me by the elbow and my wrist, and bent my arm over like this. And it hurt. . . . Well, I knocked his arm down, anyway. I pushed his arm away and he was standing and screaming at me, like just yelling up and down. He was really upset. And, like, I didn't know what to do so I called for this other guard, Mr. [C.O. 2 Peter] Anson, and asked him to tell the guy to settle down, so he wouldn't get so upset. This was all over an elastic band I had on my wrist. . . . I was in the Don Jail for a long time and my hair was really really long and you can only take a shower once a week, so your hair gets dirty. So the nurse gave me an elastic so I could hold my hair back so it wouldn't hang in my face all the time. Like, you know, I had permission from the nurse to have the elastic band. Right? So I explained that to Mr. Anson. He [another correctional officer] was yelling at me and he grabbed the elastic band off my wrist. He grabbed it once and it slipped out of his hand and slapped back on my wrist. And he grabbed it again and broke it off my wrist.

Q. And who was the correctional officer that was going to take the elastic band?

A. I don't know his name.

The officer was identified by Bowins from the book of photographs as C.O. 2 Harold Waring. This was a misidentification. The officer present at the time was C.O. 2 John Haddow.

Q. . . . Did you hit one of the correctional officers?

A. I told Mr. Anson to tell the guy, you know, he was yelling and screaming



and grabbing my hair and twisting my arm and he was really upset and ranting and raving, so I told Mr. Anson —

Q. That if Correctional Officer Waring didn't get away from you you were going to have to ding him?

A. I told him to get away from me and leave me alone because he was really upset for no reason whatsoever. . . . If he had asked me for the elastic band I would have given it to him.

Q. But the point is, we've got to be frank about this, you told Mr. Anson that if Waring didn't leave you alone you would ding him, which means hit him?

A. Yes, sir.

Q. But things settled down, did they?

A. Right. Mr. Anson — that's why I called Mr. Anson over. So he talked to the guard, you know, and told the guard to leave me and just go away. Right? And then he [Anson] talked to me for a minute. I don't know what he said, but he told me to settle down. . . .

Q. Yes. And did you explain to Mr. Anson what was behind it?

A. Yes, I explained to Mr. Anson what was happening, and I think a nurse came out then, and I even asked her about it. But I am not sure about that. Because I had permission to have the elastic band.

Q. Nothing very serious happened at that point?

A. No, nothing happened.

Q. And you went off to court?

A. Yes, I thought that was the end of it, period, you know.

Bowins agreed that he returned from court about 4:30 or 5:00.

It takes a great deal of effort to prepare inmates for court appearances and then check them back into the jail afterwards.

For inmates whose trials will not be proceeded with, and where the court appearances are only to comply with the Criminal Code, it is suggested that, instead of Mohammed going to the mountain, the mountain might come to Mohammed and a Provincial Court judge might attend for a short time at the Toronto Jail in a room open to the public and suitably furnished, for the purpose of remanding these inmates from week to week.

Among the inmates who returned to the Toronto Jail with Bowins in the police patrol wagon he mentioned Doxtater, Stoffers, and Pereira.

Bowins described what occurred upon his return to the Toronto Jail on this particular occasion, when he reached the search part of the admitting area.

A. Well . . . there was an abnormally large number of guards in there. I was held off to last, to begin with. . . . Normally there is only two or three guards in there, but there were four or five then.

Q. All the other inmates who had come in the patrol wagon with you had already gone through?

A. Yes, sir.

Q. You were the last person?

A. Yes. It only takes a few minutes to go through anyway. That wasn't out of the ordinary, being last. So I went through and took my clothes off and



everything and I noticed there was another guard standing there.

Q. You take your clothes off in the search area?

A. Yes, sir.

Q. And put on the blues?

A. Yes, sir. I noticed all the guards there and I got searched and everything, and that was fine. I was supposed to go to court the next day, so I was supposed to keep my clothes, my own clothes, and a towel and go in and have a shower. So I went to get a towel and they asked me for my clothes. So I said, "Well, I have to go to court in the morning." . . .

Q. And they asked you to give your clothes up?

A. Yes, and I explained I had to go to court the next morning . . . and they said I had to go to the hole. . . . I said, "What for?" And they said – all they said to me was it was Mr. Johnson's order.

Q. Do you know Lieutenant Johnson?

A. I used to see him around the jail. . . . Later I asked to speak to him. I wanted to know why I was going to segregation.

Q. Perhaps I jumped ahead a little bit. You were merely told by the correctional officer that you were going into segregation on Lieutenant Johnson's orders?

A. Yes, sir. And I asked what for and all I got was, "It's Mr. Johnson's orders. Do what you are supposed to do." So I was sort of ranting and raving right then. . . . I was upset about it, you know. Why should I go into the hole for something – like I should charge that guard with assault, as far as I was concerned. Like, you know, why should I have to go to segregation because for some reason he was upset?

So, anyway, Mr. [C.O. 3 James] MacDonald came in there, because they phoned up to tell him I was back, and he was supposed to escort me to detention. . . . I asked what I was going to the hole for. He just said it was Lieutenant Johnson's order. And I asked him if I could see Lieutenant Johnson and he said he was upstairs. . . . And I walked past Mr. MacDonald and I got my clothes again, just a shirt, pair of pants, pair of socks, I went upstairs, and, like, I walked past him and went upstairs . . .

Q. Did you have Mr. MacDonald's permission to go up the stairs?

A. He already told me he was upstairs, you know, and I thought that was it.

Q. Isn't what happened, he told you that Mr. Johnson was upstairs and you wanted to talk to Mr. Johnson and you didn't wait for permission?

A. No. I had already asked him if I could see him and he told me I could see him. He said he was upstairs, and I just went upstairs.

Q. You agree with me you took it upon yourself to go upstairs?

A. Yes, sir. You can't go very far anyway.

Q. What did Mr. MacDonald do when you went upstairs?

A. He came upstairs after me and stood there for a minute and I asked him where Lieutenant Johnson was, and he said: "What are you doing up here?" A few words were said and somebody grabbed me, and started pushing me towards the stairs, and a nurse came by, and I don't know what her name is. a blond-haired nurse.

The nurse referred to was identified as Jane Mannerholm. Bowins identi-

fied three of the correctional officers, in addition to MacDonald, who were at the top of the stairs as C.O. 2 George Pano, C.O. 2 Cardigan Williams, and C.O. 2 Gordon Cameron. He stated that Pano did not play any part in the proceedings.

Bowins indicated that Williams and Cameron had been downstairs earlier in the admitting area. He said there were additional correctional officers at the top of the stairs. He said Williams grabbed him when he spoke to the nurse.

A. I asked her to look at me, or something like that, because I knew they would beat me. . . .

Q. You said to the nurse, "Look at me"?

A. Yes, sir.

Q. Anything else?

A. Well, I wanted her to look to check me over, right? Because I knew what was going to happen.

Q. Did you ask her to check you over or did you just say: "Look at me"?

A. I asked her to check me over and one of the guards told her to leave, and she did.

Since Bowins was to go into segregation and he had proceeded on his own up the stairs, Williams was justified in attempting to take hold of him with a view to leading him back down to the tunnel.

A. Well, he [Williams] grabbed me again and pushed me towards the stairs, and like I was being held in every direction, and they were shoving me downstairs. I thought I was going to fall downstairs.

Q. Was there any conversation about what you were doing up there and why you were there?

A. Well, Mr. MacDonald asked me what I thought I was doing there. . . . I told him I thought he said I could see Mr. Johnson.

Q. What did he say to that?

A. He didn't say anything. That is when he grabbed me. . . .

Q. That is Correctional Officer Cardigan Williams. Where did he grab you?

A. He grabbed me from behind because Mr. MacDonald was beside me more or less and I was facing the nurse. I got grabbed by my arm, sort of, and spun around, grabbed by everybody, and they started pushing me towards the stairs, and at the top of the stairs I was afraid I was going to fall downstairs, and I grabbed the grating at the side at the top of the stairs and grabbed the bars on the other side, and they started pushing at me. Somebody punched me in the back of the neck —

Q. Were you facing downstairs?

A. Well, I was looking downstairs. I had one arm on the gate and was facing away from them, and when they started to punch at me and kick at me I was trying to avoid them and also trying to avoid going flying down the stairs. And I turned around somehow and I got kicked in the stomach and I went down the stairs. . . . [Cameron] fell down the stairs behind me. . . . When I was getting up at the bottom of the stairs I saw him bouncing down the stairs. I don't know

whether he slipped, fell or what, but he was coming down, he was on his rear end, at any rate, when I saw him.

Q. He came down the stairs after you came down?

A. Yes, sir.

Q. Who was punching and kicking?

A. All the guards that were at the top of the stairs as far as I know. I was not looking.

Q. What was the total number of guards at the top of the stairs?

A. Five at least. . . . At any rate, I landed at the bottom of the stairs and just rolled over and bounced off the wall and stood up and kind of landed on my feet.

Q. Did you go down the stairs on your feet?

A. No, I went down backwards, head first, upside down, and I landed at the bottom of the stairs.

Bowins said he was in the air from the top step to the bottom of the stairs.

Q. So you went all the way from the top, virtually the top of the stairs, down to the corridor in the basement?

A. I landed . . . at the bottom of the stairs.

Q. You landed on the bottom step, you mean?

A. Close to the bottom step, did not land directly on the stairs. I slid a little bit and rolled over and rolled out and hit the wall on the opposite side directly at the bottom of the stairs. . . .

Q. What about Mr. Cameron?

A. That is when I saw him, when I hit the wall. I kind of just stood up . . . and that is when I saw him. I don't know how he fell or whatever but he was on his rear end in any event when I saw him and all these guards were running down the stairs, coming out of the showers, and some coming up from the corridor.

Q. What were you doing when you were being punched or kicked down the stairs; did you throw any blows?

A. No. . . . I did not do anything until they came down the stairs and they all jumped on me again. They did not even ask me or anything, it was just grab and go, right, and they grabbed me and started to hit me again and I don't know how many guards were there. There were a lot more guards there then, so finally I just got an arm loose and I just hit the first person who was there. That was all I could do.

Q. How many correctional officers grabbed you when you landed?

A. Those that came down the stairs, but I don't know how many others. Some came out of the shower room and some came out [of] the corridor . . .

Q. What did they do?

A. They grabbed me and threw me on the ground and sort of grabbed me by the arms and legs and were kicking me. . . .

Q. Where?

A. This guy here, [Williams] was kicking me in the side of the neck. He had ahold of my left arm and was kicking me in . . . the back of the neck. He had my arm up; and everybody was in on it.

Q. How many times were you kicked?

A. A few, I don't know, a lot.

Q. Kicked in the back of the neck?

A. Yes.

Q. Anywhere else?

A. In the ribs, because my arms were out like this and my legs, and Mr. Kennedy, he tried to kick me in the groin but I kicked him back and knocked him down. I caught his leg between my legs and kicked him away.

Bowins identified C.O. 3 Arthur Kennedy and stated that at the time of the incident he believed that Kennedy was wearing a grey shirt. Mr. Carter confirmed that Kennedy was a C.O. 2 at the time of the incident.

A. He [Kennedy] was trying to kick me in the groin and when he tried to kick I rolled over, more or less, as much as I could, and I caught his leg. When I got my leg free, I pushed him back and I think he went into one of the large garbage containers there. One of the guards fell into that and I believe it was him.

Q. What were you doing at the time? Were you walking or standing?

A. No, I was being dragged. They had my arms and legs and by the hair and they were kicking and punching me as they were dragging me down the hall.

Q. You were being dragged down the hall?

A. Yes, sir.

Q. Were you in an upright position?

A. No, I was off the ground but I would have been laying flat on my back if I was on the ground. I was sprawled right out, facing up, just a few inches off the ground. They were running or hurrying down the hallway.

Q. Your arms were being held?

A. Yes, and my legs and my hair.

Q. How were you able to kick Mr. Kennedy?

A. When he kicked at me, I just rolled over a bit, right, and caught his leg between my legs and the whole thing stopped because he was off balance, whatever, and I managed to stop his kick.

Q. Did his kick land then?

A. The first one did inside my leg. The second one would have landed but I caught it.

Bowins admitted punching MacDonald during the fracas.

A. That was when I bounced off the wall and there was jumps and there was punching and kicking at me and I got an arm free and I just hit the first person that was there.

Q. Who did you hit?

A. MacDonald.

Q. . . . Where did you hit him?

A. I saw him a couple of days afterwards with a black eye, so I guess I hit him in the eye. I know I hit him in the side of the face some place.

Bowins indicated that when they were at the bottom of the stairs "a num-



ber of inmates” were near by, together with “a number of guards holding the inmates back”. Mr. McRae’s questioning continued.

Q. Did you kick anyone?

A. I could well have. I was trying to not get hurt as least as I could so I finally curled up in a ball so they could not kick me in the stomach any more.

Q. It was after you hit Mr. MacDonald that you were being carried down the corridor?

A. Yes.

Q. And the incident between you and Mr. Kennedy?

A. That is when I first saw Mr. Kennedy. He might have been there before, I don’t know. That is the first thing that I saw of him.

Bowins was of the opinion that there were “at least 10” correctional officers who took him to the elevator in the new building.

A. While we were waiting for the elevator, a few other guards arrived there. There was a cook from the kitchen, a red-headed cook from the kitchen, he was wearing his own coat, I guess he was on his way home, and he stopped and kicked me a few times. . . . This cook in the kitchen – he was wearing a white cook’s hat on and he had his own black coat on with the yellow crest.

Bowins identified the cook from the book of photographs as chef John O’Connell.

Q. Mr. O’Connell did what?

A. He came up and he kicked me in the armpit and down on my ribs, three to four times. When we had to wait for the elevator, everybody there, everybody stopped and kicked me two or three times. When the elevator came, as many people got in the elevator as could and the other guards ran up the stairs.

The elevator went to the wrong floor and I got kicked and punched and what not in the elevator. The elevator went to the wrong floor and they dragged me out and right to the entranceway where you go to the cells and they realized they had the wrong floor. They picked up another guard there. I don’t know if he hit me or not, but I know there was another guard there, I saw him, but at any rate they dragged me back on the elevator, smashed my head into the back of the elevator, just fired me right in.

Q. Who was on the elevator?

A. I have not the faintest idea. I was not looking because I was trying not to get hit. So anyways, we go back down to the proper floor where we were supposed to be, whatever floor that was, where all the guards were waiting and there was some more guards there. . . .

Q. Could it have been the third floor?

A. Yes.

Q. What happened when you got to the landing?

A. Well, I don’t know. I got hit once or twice. Well, I was hit, but not hard there, a few times getting dragged from the elevator to the detention cells.

THE COMMISSIONER. You keep referring to being dragged.



A. Or carried.

Q. Well, this is what I wanted to find out. I obtained the impression that you were off the ground.

A. More like I was off the ground some of the time, and my back was being dragged. I was being carried and dragged at the same time. . . .

Q. What part of your body would be on the ground?

A. My back and shoulders, sir.

Q. Your back and shoulders. Well, what was the cause of this? Was it that you were struggling and they couldn't keep you off the ground?

A. Well, I was struggling, so I imagine that was the cause.

Q. But were you at any time being led while you were walking on the ground?

A. No, I never had the opportunity to.

The 3B segregation log showed Bowins being admitted at 5:50 p.m.

Bowins said that when he reached the segregation area "they really started to get shots in at me, and everything".

MR. MCRAE. You say "they"?

A. All the guards were there.

Q. How many guards were there?

A. A lot. I don't know. There was a lot of guards there, but I don't know how many there was. I got thrown up – like, pulled upright, and thrown into the corner where the shower was.

He said that he was grabbed by C.O. 2 Edward Dowhey. He claimed that the correctional officers "tried to rip my pants because you were supposed to get undressed". He also alleged that he was punched in the mouth by MacDonald. As to the amount of force:

A. Not much. I saw him coming and I moved. I had a fat lip from it. There was no cut, or anything.

Q. And Mr. Williams ripped the pants off you?

A. He attempted to. He ripped the front of them a little bit, and MacDonald tried to hit me. I undressed myself at any rate – the rest of the clothes. They were all ripped, and ruined completely. I took that off, and I got shoved into the cell, and that's when Dowhey and Kennedy came into the cell, and they tried to keep me in a corner, and Kennedy tried to hit me a few times but I blocked most of the shots that he was throwing.

Q. What were you wearing at that time?

A. Nothing.

Q. You didn't have the baby dolls on, or anything?

A. I didn't have anything. I didn't get anything at all for, I don't know, two hours until the nurse came around.

He related that the correctional officer who accompanied the nurse was Pano.

A. Pano, yes. They came in and they opened up the door, and they were talking

to me, and the nurse said that she was going to give me something, and Pano was saying that I was lucky they pulled Kennedy off me. . . . That was the end of it for that night.

Q. So while you were in the segregation cells, Mr. Kennedy and Mr. Dowhey came in after you?

A. Right. That's when I was put right in after the clothes were off . . . they came in and tried to rough me up.

Q. What do you mean, they tried to rough you up?

A. They were punching my arms.

Q. They were punching you with their hands?

A. Yes.

Q. Fists?

A. Fists.

Q. What about their boots, or feet?

A. No, nothing like that.

Q. You blocked their punches?

A. They just hit me in the arms, and that.

Q. Did you have any injuries?

A. Yes.

Q. What were your injuries?

A. I had a lot of injuries. One side was swollen out.

Q. Side swollen?

A. That's right. My eye was purple. It was like a blood blister type – purple – not a bruise – like when you pinch your finger.

Bowins continued with a list of his injuries.

A. My heel was swollen up, and my elbow. When I landed on the stairs my heel was smashed up. I fell down the stairs and everything.

Q. Your heel was swollen?

A. Yes, sir, and my elbow had a little lump on it, and it was sore – I was sore all over.

Q. Any other injuries that were visible to you, or that felt sore?

A. Oh, yes, all over. My ribs – I was kicked in the ribs, in the chest, and my ribs and the back of my neck was all sore and bruised.

Q. What about your head?

A. Oh, I didn't remember getting banged in the head, but that didn't hurt.

Q. Was there any apparent lump on your head?

A. None that I knew.

Q. Nothing that relates to this, at any rate?

A. Well, other than – I got hit in the jaw, but that was nothing. It didn't mark, or anything like that, but I was just sore all over, generally.

Bowins was referred to the evidence of Dr. Gerald Wisenberg, who saw him in the emergency department of the Toronto General Hospital, on December 7, 1973. Bowins had been referred to the hospital by His Honour Judge Graburn of the County Court of the Judicial District of York. This was a result of a complaint of assault by Bowins when he appeared before

the judge for his trial. The written report of Dr. Wisenberg read (in part):

He stated that he had been assaulted by 16 policemen the previous evening at 5:00 p.m. in the Don Jail, claiming to have been hit in the head, back, chest, abdomen, kidney area and thrown down to the ground injuring his right heel. As well, this morning [December 7th] he claims he had a bowel movement which was followed by passage of bright red blood per rectum. There was no loss of consciousness following the assault.

On examining him, there were a few external evidences of injury either being inflicted by another person or even incurred by the patient falling. He had a superficial abrasion over his right chest anteriorly [the front of his chest], over the upper portion of his abdomen, his right loin, and right elbow. There was a small lump on his skull on the left side but this was not tender and was likely incurred at least a week or more ago. There was no evidence anywhere of blood loss and his hemoglobin is perfectly normal. Neurologically there was no evidence of any abnormality. He had some mild tenderness over his lumbar spine [lower back], right loin, right fourth and fifth ribs, and right elbow and heel.

X-rays were taken of his skull, ribs, lumbar thoracic spine, abdomen, and right foot, all showing no abnormalities. The rest of the physical examination was entirely normal. His urine showed no evidence of blood cells which would indicate no damage to his kidneys. On rectal examination, there was no blood present, there was a large amount of stool present, something one would not expect if he had had a bowel movement earlier in the day. The stool tested negative for blood.

In summary then, physical examination showed only evidence of superficial injury with abrasions to the skin and underlying soft tissue bruising. These findings were corroborated by laboratory investigations and X-rays. The exact manner in which he received the above-mentioned injuries cannot be determined. There was no evidence whatsoever of kidney injury, blood loss, or other serious injury.

According to Bowins, the doctor misinterpreted the reference to being assaulted by 16 policemen. Bowins explained:

- A. I said "coppers", and he imagined, or he assumed that I meant policemen. . . .
- Q. Correctional officers are referred to as coppers?
- A. Yes, sir.
- Q. Is that a common expression for correctional officers?
- A. Yes, sir.

It would be relevant at this juncture to refer to Mr. Carter's questioning of Dr. Wisenberg when the latter gave oral evidence before the Commission about Bowins' injuries.

MR. CARTER. We are talking about hard blows, and I can't give you the exact number, but somewhere between six and 10 kicks and 12 to 15 punches.

- A. There was no external evidence of that being the case. One would have

expected more severe injuries; one would have expected blood in his urine and blood in his stool.

Q. All right. Did you examine his face?

A. Yes.

Q. And were there any marks there?

A. There were no marks on his face. The only thing was a lump, as I mentioned, on his skull but on his face itself there were not.

Q. You did not find then any cut lip or anything of that nature consistent with a punch in the face?

A. No. I looked inside his mouth.

Q. And there was nothing?

A. There was nothing there.

Having in mind Dr. Wisenberg's evidence, his report, the other evidence filed with reference to the Toronto General Hospital, and the X-ray reports, I cannot help but conclude that Bowins' injuries were incompatible with his allegations of the manner and severity of the alleged assault and I do not accept that he was assaulted as he alleged. Specifically, the probabilities of his having been thrown down the stone stairs leading to the basement and having been kicked and punched as alleged are against the medical and X-ray findings of the following day.

Bowins said that the morning following his alleged assault there were "footprints all over me. . . . I had a heel print on the side of my face and all over the place scuff marks." He indicated that he was able to wash these marks off his face, that he requested to see a doctor, that this request was (he thought) made to C.O. 4 George Wilson, and that Wilson "went in and asked somebody and somebody else came back and told me I couldn't".

Bowins was examined further by Mr. McRae.

MR. MCRAE. Did you tell him, by the way, that you had seen blood in your stool?

A. Yes. That's why I wanted to see the doctor. I told him it was important, you know? It's not an everyday thing. It had me upset. So I went to court that morning and when I went in the court room my lawyer got really upset because I came to court all marked up. They had just selected the jury the day before and he said that wasn't good. So he asked me if I wanted to go to the hospital and I told him I saw blood in my bowels and he said I should.

Q. And your lawyer was Mr. André Dempsey?

A. Yes. . . . And . . . Judge Graburn sent the jury out and . . . asked me if I wanted to go to the hospital and I just told him that I thought I should. Then I told him about the blood in my bowel. And I said that's where I think I should go.

Q. And were you . . . taken to the hospital?

A. Yes.

Q. What happened to your trial?

A. It was postponed for another day.

By the time Bowins gave evidence, C.O. 2 David Cockburn had left the Toronto Jail to take a position in the United Kingdom.



Cockburn had given evidence concerning the Bowins incident and it was reviewed for Bowins to give him an opportunity to comment on it. Some of Cockburn's evidence also is set out later in this review of the Bowins allegation.

Mr. McRae quoted Cockburn as saying: "Bowins was kind of up tight. Mr. MacDonald tried to calm him down when he hit Mr. MacDonald in the face."

Mr. McRae quoted Cockburn, further: "When he struck Mr. MacDonald we grabbed him and tried to take him down the stairs, struggling pretty bad. Before half way down the stairs I noticed Mr. Cameron go down the stairs head first." Cockburn had stated that he could not tell what caused Cameron to go down the stairs head first. He had added: "Bowins was in the middle. Mr. Cameron had one arm and I had the other arm. Mr. Cameron went down and I went down and Bowins jumped over us and went down the stairs right up against the wall. . . . He was standing up. He had his fists up and shouted, 'Come and get me,' something of that nature."

Bowins' comment was as follows: "No, I went down the stairs before he did. When I got back up is when I saw him on the stairs. Unless he went downstairs first and I went over top of him. I don't know. As far as I know, I went down the stairs first."

Bowins first recalled seeing Cockburn in the basement corridor, where "he tried to hit me with an elbow and I just sunk my teeth into him".

Mr. McRae said Cockburn had stated that the other officers then came and grabbed Bowins. Cockburn had been asked whether he was struggling in any fashion at that time, himself, and he had said: "I believe he had me by the testicles. We [took] him off to the segregation. . . . I know I was grabbed just because I was very sore afterwards. As a matter of fact I saw the doctor afterwards."

Bowins denied Cockburn's allegation. Although Cockburn had exhibited a strong opinion on the matter of discipline and a "we-they" attitude towards inmates, I accept his evidence with reference to the above. It may be that, in the heat of the struggle, Bowins did not recall what he had done.

There was also a difference of opinion between Cockburn and Bowins as to the number of correctional officers who escorted him to segregation. Cockburn had said four, and Bowins said there were, "a lot more than that".

As for Cockburn's allegation that Bowins had kicked Kennedy in the stomach or groin area, Bowins did not deny this but said that it was after he had been kicked by Kennedy.

When Bowins was interviewed by the Metropolitan Toronto Police, he was asked if he wanted to lay charges. "I said I didn't want to charge him right then. . . . I wanted to charge the first guard that morning that grabbed my arm, you know, because the whole thing was unnecessary as far as I was concerned."

Bowins felt a sense of injustice at the way he was treated in the morning before going to court. With reference to the afternoon episode following his return from court, he probably felt that he had given as much as he had received.



Haddow's description of the misconduct was "threatening an officer and refusing to obey an order". The details were as follows: "I observed above inmate with elastic bands on his wrists. I ordered above inmate to remove the bands from his wrist, he refused, saying 'The nurse gave them to me.' I removed one band from his wrist and told inmate to take off the other one, he stated, I'll punch you in the face. Cpl. Wilson ordered inmate to remove band from his wrist, then proceed to court."

Parts 2, 3, and 4 of the Misconduct Report were not made out, because the matter was investigated by an outside agency, the Metropolitan Toronto Police.

Written reports were submitted to the Superintendent by MacDonald, Cameron, Williams, and Cockburn. These statements were filed as exhibits. In addition, they, of course, gave *viva voce* evidence before the Commission, as did others. In all, 20 witnesses were called.

## EVIDENCE OF DELIO PEREIRA

The inmate witnesses did not add a great deal to the over-all picture. The first of these to testify was Pereira, who said that Bowins came down the stairway from Corridors 7 and 8 in a strange manner and that he was "grabbed and punched" by correctional officers and "started swinging back".

Pereira did not see what occurred at the top of the stairs. He was of the opinion that the correctional officers were using stronger tactics than were necessary to subdue Bowins. "If they were trying to subdue him there were enough of them to do it, you know, just to hold him they could have all jumped on top of him and held him right there and say, 'Don't lose your temper.' If they were trying to do this, you know, they would have succeeded. But they weren't. Because from what I could see, you know, as they were dragging him down the corridor they were kicking him and one had him by the hair, you know, this sort of thing. It was really pathetic."

It was Pereira's opinion, therefore, that more force was being used than was necessary and that the actions of the correctional officers were needlessly aggressive. This may have been the case, or Pereira's recounting may have been biased in favour of the inmate. Certainly I do not think it would have been very effective to say to Bowins, "Don't lose your temper." I do not share Pereira's optimistic opinion that this would have succeeded.

Pereira made mention of the reaction by the inmates.

A. There were six or seven of us inmates I'm referring to, and we all sort of – we didn't participate physically, we were just yelling, you know, like we were just on the verge of breaking out and really getting into it and that sort of thing. But we never did, because more guards came down the stairs and we sort

of backed away.

MR. MCRAE. Is that all?

A. That's what happened there.

This controlling action of the other inmates by additional correctional officers may have given Bowins the impression that there were more correctional officers involved than just those engaged in escorting him to segregation.

Pereira stated that he saw Bowins the next day.

A. . . . he said he had bumps on his head and he had long hair . . . I did not doubt him so assumed he did have them. . . . I seen a few scratches on his ribs.

Q. Did he lift up his shirt and show you scratches?

A. Yes, took off his shirt.

Q. Did he tell you anything else? Did he tell you, "I have trouble urinating" or "Trouble with bowels?"

A. I don't know if he did, but did tell me he had trouble digesting . . .

Q. Did he complain of blood?

A. I am not sure. This is such a long time.

This evidence by a fellow inmate would appear to put Bowins' injuries in proper perspective. No doubt if Bowins had complained of blood it would have impressed Pereira and the fact that Pereira cannot recall supports the evidence of Dr. Wisenberg.

## EVIDENCE OF RICHARD DOXTATER

This inmate was not available to give oral evidence. His statement, given to the Commission investigators, was filed as evidence. In the statement he mentioned that Bowins had been told before going to court that the incident that occurred in the rotunda would be dealt with on his return from court. The rest of Doxtater's statement conformed generally to the other evidence as to what occurred in the morning.

## EVIDENCE OF DIETMAR STOFFERS

This inmate described the elastic band episode that occurred before Bowins went to court.

MR. MCRAE. There was nothing that prompted the correctional officer to ask for

the elastics?

A. No. I was standing beside him and he just came over and said he wanted the elastics. . . . It was just that the guard started getting violent by grabbing his arm and twisting it and Mike didn't want his arm twisted . . . and a verbal argument about the elastic bands.

Stoffers described Wilson and also referred to Haddow:

A. He [Wilson] is the kind of guard that just wants to keep things quiet, nobody cause trouble, and tried to cool things down and apparently it was, but the guard [Haddow] that had started the argument with Mike said we will be seeing you when you come back from court.

Q. Did he say anything further?

A. No. He was too upset, I guess.

On returning from court, Stoffers was first aware of a problem when he heard Bowins "arguing with the guards and saying like, asking why he is going to the hole and the guard says we don't know because we changed shifts and we have orders you have to go to the hole".

This was not a satisfactory answer as to why Bowins was to be placed in segregation. It was the sort of answer that could aggravate a situation. Bowins' question was a reasonable one and it would not have been difficult to answer it or to call a senior officer.

Certainly, there should be communication between shifts, and, if a decision that someone is to go into segregation is made during an earlier shift and cannot be carried out until the next shift, full details should be transmitted to that later shift.

Q. You could hear an exchange between the correctional officer and Bowins while you were in the shower?

A. Yes. And he asked to see a lieutenant or assistant superintendent, somebody with authority there to straighten it out. The guards refused and said, never mind, do as you are told, and he kept arguing and finally I guess they agreed to [let him] see somebody.

Stoffers said that, subsequently, he saw Bowins coming down the stairs. He described it as "flying by".

A. I saw him maybe six steps from the top and he came down so I backed away. . . . And immediately after that two guards . . . came after [him].

Q. Where did they come from?

A. The top of the stairs and they came running down after Mike I believe and well – that's when the fight started like. Like he was yelling what are you doing and all of that. . . . And so I was yelling at him too I guess. I guess he was trying to make them stop fighting you know . . . he was trying to defend himself, and well – just by the looks of him that wasn't going to work. There were too many beating on him so I guess he started swinging. He had no other choice. He hit Mr. MacDonald.

Q. Where did he hit Mr. MacDonald?

A. In the eye because he had a black eye for quite a while after that. . . . They just threw him down and they were beating on him. There was no restraining at all there.

Q. All right, and he was kicking and punching back?

A. He was defending himself.

Q. No, but he was kicking and throwing punches?

A. Yes. . . .

Q. Was he eventually sort of put down and ——

A. Yes, and there were a number of officers that were on him and you know just too much weight and he was thrown down and from what I saw a couple of guards like grabbed him by his arms and his legs and spread-eagled him . . . and they were trying to drag him down the hall and there were a number of guards around him kicking him.

Q. Were they kicking him with their boots?

A. Yes.

Q. And what area were they kicking him in?

A. Anywhere they could kick him. All over.

Q. All over his body?

A. All over his body from his head to shoulders. He was kicked all over.

Q. All over his body?

A. Right. There were a number of punches and hair-pulling and everything.

Stoffers said the incident at the foot of the stairs lasted “just over 30 seconds” and then Bowins was dragged down the corridor out of his sight.

Stoffers said that he saw Bowins the next day and his evidence contradicted that of Bowins with reference to the bowel movement.

Q. Did he have time to go to the bathroom and have a bowel movement?

A. I don't think so.

Q. Are you pretty certain about that?

A. Yes, sir.

Q. So you were taken to court together, were you?

A. Yes we were.

Q. In the same wagon?

A. Yes.

Q. Did you notice anything about his condition?

A. Yes, he was beat up.

Q. Okay. That's a bit of a conclusion. What I would like you to do is try and describe what you saw.

A. Well, he had numerous red marks all over his body from kicks or punches.

Q. All right. Can you tell us where the red marks were and describe them any better than that?

A. On his chest and his side and his back and his neck and face, the side of his face. They were numerous.

Q. Did he not have a shirt on?

A. Yes, but he showed it to us in the paddywagon.

Q. Would they be bruises or red marks or abrasions?

A. Just big red marks. I don't know if they turned to bruises or whatever.

Q. And did he tell you anything about his condition other than showing you his bruises? Did he say anything to you about pain?

A. Yes.

Q. Could you tell us what he told you?

A. He said he was in pain and I think he told me what happened after he was taken away, but I don't remember that. Just the condition he was in.

Q. Did he mention having trouble urinating or anything like that?

A. I don't recall that.

Q. Did he mention blood in his stool?

A. I don't recall that.

Q. Do you recall anything else about his condition other than what you have told us?

A. Just the fact that he looked pretty badly beaten up.

Stoffers indicated that during the altercation at the foot of the stairs he [Stoffers] was yelling at a correctional officer "for them to stop fighting".

He also had an opinion about the attitude of the correctional officers to the altercation.

A. He [Bowins] didn't start first. He was protecting, defending himself first I guess in the hopes that they would stop beating him and just take him away. THE COMMISSIONER. So this is a conclusion on your part about their determination to beat him?

A. No. All you had to do is look on the guards' faces as they were running by and you could tell they were not about to stop.

Q. Well, what did you see about their faces?

A. It just looked like a pack of animals.

Q. In what way?

A. Just looked like they were anticipating a good fight or just looked like [they were] going to really enjoy this.

Q. I don't know how you can read that in someone's face. Maybe you can. Did they seem excited?

A. Yes, sir. . . .

Q. The impression that you obtained from what you saw, was it that they used or attempted to use sufficient force to restrain Bowins and he kept struggling or that they had the intent of using more than sufficient force to restrain him?

A. That look I saw, you could see that it was their intent right from the beginning they were just going to lay a beating on him and no restraint about it.

The determination to subdue Bowins and take him to segregation and possibly even to avenge his striking of MacDonald had resulted in the use of force on the part of correctional staff. It may be that they purposely did not weigh with nicety the amount of force necessary to control Bowins.

From other incidents it was brought out, and it might be argued here, that Bowins presented a threat of injury to the correctional staff, and when this occurs, or when there is a threat of one inmate to another, it may be difficult to say where control ends and excessive use of force begins.

The primary purpose is to control the inmate aggressor so as to prevent further injury to other inmates or correctional staff. It is during these times



that it is vitally necessary, wherever possible, to have responsible senior staff present to weigh the situation and to ensure that no more force is used than is necessary. As has been recommended, this should be someone who was not involved (as were MacDonald and Kennedy in this case).

In the cross-examination of Stoffers by Mr. Carter it was brought out that the elastic bands were not surrendered to Haddow when he requested them and they were not, at that time, being used for the purpose of tying Bowins' hair back, so that he could wash his face or keep the hair out of his face. Stoffers said that the conversation between Haddow and Bowins was in a normal tone at the beginning.

It was Mr. Carter's contention that Bowins was not pushed down the stairs but might have lost his balance when a grip on him was released while he was attempting to break away – that everything occurred very quickly at the foot of the stairs, with punches and flailing arms.

MR. CARTER. And there were these punches and flailing of arms really by everybody [including Bowins] who was there; is that right?

A. Yes.

## EVIDENCE OF COLIN FERNALL

This witness was a Metropolitan Toronto Police officer with the rank of sergeant. He had 18 years' experience as a police officer and was in charge of Bowins' criminal case. He was one of the officers who took Bowins from court to the hospital for examination.

He said that he made observations of Bowins' physical condition. "I saw at that time that there were no marks on his face I could see. There were no marks of abrasions or scratches on any part of his neck, face or hands which was open to observation. He was then limping very badly on his right leg, his ankle."

A. I then went with Bowins into the small examination room . . . when he took off his clothes and put on the white smock I could not see any marks on his body. I was paying particular attention because I was looking for them.

MR. MCRAE. Did you look in the area of his chest and ribs?

A. I just saw the back of him as he was putting on the smock.

Fernall related a conversation with Bowins while they were in the hospital.

A. Bowins said to me, "This is the fourth time I have been brought here after getting beat up in the Don by those [deletion]." . . . Later he said, again in the same room, "Look at my head, I've got a lump over my left eye. I can feel it. No wonder my head aches. I forgot to tell the doctor about the lump on my wrist, look at that." He raised up his left hand and I again could not see any particular lump on the left wrist.

Fernall said that at one time, when Bowins was on a stretcher, the head nurse came with a footstool.

- A. I noted that Bowins swung his feet off the stretcher and he jumped off very quickly, and then he walked to the bathroom.
- Q. You are saying he didn't use the footstool?
- A. He did not use the footstool. The head nurse then came up to me and made several comments. . . . She indicated why had I brought such a live one to the hospital and why was I wasting my time? She was somewhat annoyed. . . .
- Q. How did he walk when he walked to the washroom?
- A. He walked quite naturally.

Similarly, Fernall said, as Bowins was leaving the hospital and walking to the police car, "he did not limp, and he was laughing".

## EVIDENCE OF JOHN HADDOW

C.O. 2 Haddow was 48 years of age, 5'8" in height, and weighed 190 pounds. He had been employed by the Ministry of Correctional Services for approximately 10 years, working first at the Monteith Industrial Farm and then since 1973, in the Toronto Jail. He had a five-week training course at Guelph in 1964. He had applied for a transfer to the Toronto area for family reasons. Although his experience at Monteith would no doubt be of assistance at the Toronto Jail, both the milieu and the clientèle are different.

It is recommended that there be an orientation course for correctional officers who have been transferred from other institutions, particularly those with a lower security classification, as early as possible after they commence employment at the Toronto Jail.

Haddow said that he and not Waring was on duty in the area at the time of the morning incident. Haddow related that the inmates were called out of the corridor and lined up in single file and that he observed elastic bands, "roughly three to four, something like that," on Bowins' wrist.

- A. So I had to ask the inmate to remove the bands and take them off. And he said no, no way.

MR. MCRAE. Did he explain why he wouldn't take them off or where he got them?

A. Well, there were words exchanged. I asked him a second time to remove the bands then he told me he had received them from, I think it was a nurse he said. He didn't take the bands off, and he had his hands in front of him, and I was standing like two feet from him and I took the band - I was taking the band off. I didn't see any significance to it, I was just removing a band. It wasn't unreasonable. And he refused. At that point he turned around and lifted his hand up and said, "I'll smash you in the face."

- Q. What did he do? You reached over and pulled at the elastic band?

A. Yes. The bands were loose enough, they were hanging down on his wrist and they would come off, you know. But then he wanted to keep the bands and he had the bands on his wrist.

Q. Did you get any of them off?

A. I think, as a matter of fact. I think one came off, you know, one came off and the rest of them stayed on his wrist.

Q. Did you actually physically take hold of his arm and twist his arm?

A. There was no need to, with all those men there. I was more concerned with just taking the bands off and that's it. It was no big hassle or deal as far as I was concerned regarding the elastic band.

Q. So he then made a fist at you?

A. That's right.

Q. And said what?

A. He was going to punch me in the face.

Haddow stated that C.O. 2 Peter Anson came over. He said that C.O. 5 John Moquin, the shift supervisor, also came around at that time and that he told Moquin that "the guy attacked me, and that was it – there is not much time for conversation, as far as that goes".

Haddow was not sure whether Moquin had witnessed the incident. Haddow made out a Misconduct Report but did not tell Bowins that he was going to charge him. He did not know whether anyone else told him he was going to segregation.

Haddow went off duty at three o'clock and he did not recall seeing Bowins after that time. He was questioned about Bowins' evidence.

Q. Were you screaming at him, as he alleges?

A. I don't know what you call screaming. But in that area at that time of the morning your voice may be louder than it normally is, so he may classify that as screaming.

Q. Were you really upset?

A. No. I wouldn't say at the time, because when I asked him to remove the bands and he refused, I asked him again. If I had taken hold of his arm and twisted it to get the bands off, I guess there would be quite a bit of commotion.

Q. So you say you didn't grab his arm or his elbow and twist it back?

A. No.

Haddow was asked if, in retrospect, he would have dealt with the incident of the elastic bands in some other manner, to which he replied, "Well in a case like this I don't see how, sir, because an inmate had an article in his possession which in the first place was contraband. And secondly, he had been asked to remove it. There was nothing unusual but just asking the man to take them off and if he had taken them off that would have been the end of it. There would have been nothing more. . . . You see they should not have been allowed to have them in the first place."

He did agree, however, that he could have spoken to Moquin or Wilson.

A. It is possible we could have done that in that sense but at the time I was

talking to him I wasn't looking around to see who was present around in the area at the time.

THE COMMISSIONER. Yes, but I am just wondering in the physical attempt on your part to remove the elastic bands from Bowins' wrists at the time when he said he was not going to turn them over to you, whether that in itself might not be something that might tend to precipitate an action on the part of Bowins?

A. Well, it may have. I think it would have been better perhaps to have taken them all the way down and, when we got down there, [get] after them there in the presence of somebody else, but when you have a case like this and you are moving somebody and there are other people waiting to get in behind you, you are not at all thinking of things like this. It's something that just happens all at once.

Q. Yes. Do you think if you had a situation, a similar situation now that you might tell an inmate that you – that if he didn't remove them and hand the elastic bands over to you that you might put him on charge?

A. Well actually, sir, the charge wasn't just the elastic bands. It was threatening an officer which is another —

Q. Would you have written out a Misconduct Report if he had not threatened you and it was just a matter of refusing to hand over the elastic bands?

A. Well, that, I think – it would be the same thing you know.

Q. You think it would be the same thing?

A. I think so because this also involved disobeying an order and you are losing your discipline.

Q. Yes, and that's why I am asking if, in a similar situation, it might not be advisable to tell an inmate that if he didn't conform to an order to hand over the elastic band that he was going to have a misconduct charge laid?

A. Yes.

Q. That might tend to have the inmate change his mind about refusing to hand over the elastic bands?

A. Well, after seeing his actions I don't think it would have changed his mind.

Q. But you had never given him the opportunity of telling him that you were going to charge him?

A. No.

Q. I see. Did you report this matter to anyone such as Mr. MacDonald or anybody else that was going to be on later in the day at any time before you went off duty?

A. No, sir. You see I made the report and I handed it to the senior officer who was in charge and it is then taken into the office and after that it is up to them to make any complaint.

## EVIDENCE OF PETER SAMUEL ANSON

C.O. 2 Anson was 56 years of age. He was on duty in Corridors 7 and 8 and it was he that stepped between Bowins and Haddow and warned Bowins

to "cool it".

With reference to the Misconduct Report, Anson was asked when he signed as a witness.

A. Mr. Haddow came to me and he asked me what about this Bowins. So I advised Mr. Haddow to lay the charge that Bowins had threatened him.

Q. When did you have that conversation with Mr. Haddow?

A. Oh, about 10 minutes after we had gone downstairs. I must say that Bowins was not informed that the charge had been laid against him until he came back from court.

Q. As a result of the conversation you had, Mr. Haddow filled out the Misconduct Report?

A. Right.

Q. Was Mr. Moquin present when any of this happened?

A. I can't recall that, sir. All I know is that Mr. Wilson was there, he had just come up the stairs.

The above evidence may be at variance with, or it may be supplementary to, Haddow's evidence that he requested, and obtained, permission from Moquin with reference to the Misconduct Report; but it is significant that Anson volunteered that Bowins was not informed of the charge that had been laid against him until he came back from court.

Anson denied Bowins' statement that Haddow was "yelling and screaming", adding, "Mr. Haddow was very calm as he always is." Haddow, in his evidence, had indicated that because of the noise in the area he may have raised his voice.

Anson was questioned further with reference to Bowins' knowledge of the charge and its effect on him.

THE COMMISSIONER. I suppose if Bowins had not been told about this charge when he left to go to court, it could come as a bit of a surprise to him when he came back.

A. Right, sir.

Q. And that might be an upsetting factor. You nod, yes?

A. Yes, sir.

## EVIDENCE OF GEORGE WILSON

Wilson recalled being on duty at the time, in the area.

MR. MCRAE. . . . So you had arrived at the top of the landing and you heard some shouting and scuffling?

A. Well, not scuffling. Shouting. . . . Officer Haddow — appeared to reach out a hand to take a hold of Bowins' hand. This — I had heard something about a



rubber band and by that time Bowins came over to me and he says, "Oh, what's all this hassle about a rubber band?" and I said, "Look, if you were told to take it off, why have all of the hassle over a rubber band?" He said, "I don't like having hassles. I am going to court." And I took the rubber band off, and he quietened down and that sort of settled that, sir. He had simmered down by that time.

Q. Was he a little upset?

A. Oh, yes, a wee bit hot under the collar, you know.

Q. Was there any kind of altercation between officer Haddow and Mr. Bowins?

A. Not that I actually witnessed, sir. . . .

Q. He gave you the rubber band?

A. He gave me the rubber band. They are really quite dangerous. It's one of the things you wouldn't think so, but they can be quite dangerous.

Q. What do you mean, how they are used?

A. Well, they can be dangerous. If I had a rubber band and cut it open and pulled it back and flicked it in somebody's eye they could lose the eye. . . .

Q. Well, Mr. Bowins said he was given it by the nurse, Miss Mannerholm, to keep his hair off his face while washing and generally to hold the hair back. Do you know anything about that?

A. I couldn't say yes as to who gave him the band, sir.

Q. Well, would that be a likely thing for a nurse to do?

A. Well, some of them do wear bands, you know, but this was apparently a fairly heavy band. I would have thought that it was very wrong for any nurse to give it to him if she did.

Q. Was there some suggestion that Mr. Bowins would be going to segregation as a result of what occurred on that landing in the morning? . . .

A. I don't know anything about that, sir.

With reference to the charge sheet, Wilson said:

A. I didn't see the actual charge or whatever actually happened. . . . I understand that he did threaten Mr. Haddow but I didn't hear it.

Q. You didn't charge him yourself?

A. No.

Q. You didn't even know that he had been charged?

A. No, not at that particular time. The following day.

Q. Pardon?

A. The following day I heard about it. . . .

THE COMMISSIONER. Well, Sergeant Wilson, it indicates that the signatures, one of which is yours, are signatures for witnesses to misconduct. As I understand your evidence today, you didn't hear Mr. Bowins threaten Mr. Haddow?

A. No, I didn't hear him threaten him, no, sir.

Q. Yes. Well, what would be the offence for which you were signing as a witness to misconduct?

A. When an officer gives any inmate an order, we expect the inmate to obey that order.

In the Misconduct Report, it appeared from Wilson's signature that he

was a witness both to the threatening of an officer and to the refusal to obey an order, and there was nothing to indicate that his signing as a witness was on a date other than the one on which the report was prepared. This is a further area in which there could be some tightening up of procedure with reference to the preparation of Misconduct Reports.

## EVIDENCE OF JAMES HUGH MacDONALD

At the time of giving evidence, April 4, 1975, this witness held the rank of C.O. 4. He had been employed for nine years with the Ministry. At the time of the incident he was a C.O. 3.

MR. MCRAE. What was the first information that you had . . . that when Bowins had returned from court there was an order that he be put into segregation?

A. I was informed at approximately 3 o'clock in the afternoon by Mr. Johnson who was the shift supervisor that when Michael Bowins returned from court he had to be placed in segregation.

Q. Did you pass that information on?

A. I was there myself, I would have been the one to put him in segregation.

Q. I see. So you actually worked in the search area and the admitting area?

A. In the admitting area. . . .

Q. And do you recall Mr. Bowins coming in from court that afternoon?

A. I do. . . . And I believe Bowins was the last one I called through. I told him, I says, "You . . . are to be placed in segregation." . . . And he says, "Why?" and I says, "A charge has been laid against you on your report." He says something about "no bloody way". And I says, "Well just go, proceed down to the search area." And I had another prisoner come in by this time.

Q. You did not have time to get into an argument right there?

A. No, I really don't get into arguments with them anyway. He was taken by the searcher, I do not know who the searcher was, and taken to be searched.

MacDonald said that he had cleared up some paper work that he was engaged in when he heard Bowins shouting.

A. He was shouting something about "what am I going to segregation for". And I said - I got there at that time and I said, "You are on charge. You will be placed in segregation." And he said, "Well, no bloody way. I want to see a white shirt." I had a white shirt on myself, so I said, "What's your problem?" And he said, "I want to know why." And I said, "My orders from Mr. Johnson are you are to be placed in segregation. You are under charge." What the charge was, I didn't know. And he says, "Why?" And I said, "I don't know." . . . He said, "I want to see a white shirt." And I said, "You will see him when you get upstairs."

Q. Do you mean segregation?

A. I did mean that, but he must have taken me to mean up in the dome area.

So he rushed on ahead of me up the stairs —

Q. You rushed after him, did you?

A. Yes.

Q. Did any other correctional officer come with you?

A. I am afraid I didn't look behind me. They must have. . . . And when I caught up with him he was up on the landing outside 7 and 8 corridor. . . . When I got on the landing he had his back against the screen which protects the stairwell outside 7 and 8 corridor. . . . Then I put my hand on him, actually to get ahold of him, because, you know, to escort him.

Q. What were you going to do?

A. He wasn't going to walk on his own accord and I directed him. And before I got my hand on him he hit me right in the face, on the left side.

Q. Before you even touched him?

A. Before I even got my hands on him. . . . It was quite a blow too. It didn't knock me down, but it knocked me back a few steps . . . and then there were two correctional officers who grabbed him on either side, but he's a pretty big boy and he was sort of still fairly loose. And just then he turned towards the stairs and I got behind him and got my arm around his neck in a lock. And he was heading toward the stairs, but the stairs, being so narrow, this would have meant more or less four abreast, or three abreast, which is just an impossibility. So I fell back again more or less in the crush, and broke my hold. And just then everybody seemed to rush downstairs and I followed. And when I got to the bottom Bowins got up. He had been lying on the floor.

Q. He went downstairs and ended up on his back on the floor downstairs?

A. With Correctional Officer Cameron.

Q. Cameron was there too?

A. He was on the floor.

Q. So Bowins and Cameron were lying on the floor?

A. Lying on the floor at the foot of the stairs. . . . And Bowins jumped on his feet and started swinging and kicking.

Q. Swinging with what?

A. With his fist. Kicking all over the place. And then the correctional officers managed to get ahold of him again, but it was quite a difficult thing. He was a rather violent fellow at that time.

Q. What sort of restraint was put on him by the correctional officers? Kicking him and punching him?

A. No. I wouldn't call that restraint. The restraint was, they tried to hold his arms, to prevent him from kicking by holding his legs.

Q. Did . . . any correctional officer hit Bowins?

A. No. . . . I don't think so. If you can subdue a fellow by holding his arms and holding his legs, it is not necessary.

MacDonald said four or five officers, including himself, escorted Bowins to segregation. Nothing untoward happened on the way, except that Bowins was struggling all the time.

Q. Did anything unusual happen while he was being placed in the cell? Did

anybody use any force on him?

A. Not to my recollection.

Q. Were you there until he was locked in?

A. I believe I was. I am afraid that bit is rather vague, it was so long ago.

He specifically denied striking Bowins in segregation as alleged.

MacDonald said that two or three days later he attended before a justice of the peace and laid an assault charge against Bowins, but the charge was never heard. This is a reminder that assault charges may be laid in the regular criminal courts, not only by inmates against correctional officers, but also by correctional officers against inmates.

MacDonald was candid about the reason Bowins was not told why he was being put into segregation.

THE COMMISSIONER. Mr. MacDonald, when you were advised by someone that a charge was being laid against Bowins and that he was to be placed in segregation, did you inquire as to the nature of the offence that he was being charged with?

A. I did not.

Q. Did you know that you were going to have to tell Bowins that he was to go to segregation?

A. That was my duty, to tell him.

Q. Yes. And I suppose an inmate would want to know why he was going into segregation would he not?

A. Yes.

Q. Maybe that was something that disturbed him, that he was not able to find out from you when you first told him about going into segregation, the reason why he was going into segregation?

A. I can understand that, yes.

Q. Yes. Looking back at the matter now, do you think it would have been advisable for you to have inquired as to the offence for which he was to be put in segregation?

A. Looking back, yes. It may have been, but in my opinion Bowins, his own statement was in no way was he going into segregation quietly.

Q. That may well be, maybe one of the reasons was because he could not find out why he was being sent to segregation.

A. I would assume that he would take it that it was from the incident that happened in the morning.

Q. That is a reasonable assumption, but you did not know what the incident was?

A. No, I did not know what it was.

Q. So you could not communicate that to him?

A. No, I could not.

Q. . . . It may be that he did not know exactly what it was that was alleged that he did wrong?

A. That was possible.

MacDonald was most definite that he was struck at the top of the stairs

and not at the bottom of the stairway, despite some evidence to the contrary. He admitted recalling, at the bottom of the stairs, four or five inmates voicing their opinion and shouting to take it easy and things like that. As to why they were shouting, he said:

- A. Well we were holding Bowins down on the basement floor and he was struggling rather violently.
- Q. In your opinion do you think that the other inmates thought there was too much force being used?
- A. They may have that opinion, they may have but I personally do not think so.

## EVIDENCE OF ARTHUR J. KENNEDY

C.O. 4 Kennedy was 42 years of age and a C.O. 3 when he gave evidence. He was born in Toronto. He was 6'2" in height and weighed approximately 225 pounds. He had been employed at the Toronto Jail since 1963. In addition to taking the Guelph course in 1966, he took a management course in 1972. He qualified as a St. John Ambulance instructor in 1971 and also took a course at McMaster University in criminology.

Kennedy had been working in the photography and fingerprinting area when he heard noise in the basement hallway.

- A. I was not too upset with the commotion because it was just about supper time and there was a great many guys from the kitchen. Inmates who worked in the kitchen had been out there and the noise was not unusual to be quite frank with you. And as I came out of there, if it please the Commission, I walked into what I might call a can of worms . . . everybody was lying sort of at the bottom of the stairs. . . . And Bowins was struggling with the other officers and doing a pretty good job. As I approached, I said nothing, and basically what I meant to do was make a grab for a foot. I did not grab it fast enough, I got it in the groin. . . . I tried to grab one of Bowins's feet and I did not get too close to him. As soon as I got within reach he nailed me in the groin throwing me back against the wall and into the cart which is used to convey dishes and so on and so forth back to the kitchen. . . .

MR. MCRAE. And you fell right into the cart?

- A. That's right.

Q. Was Bowins on his feet at the time?

- A. Half on his feet and half struggling. . . . He was being held by correctional officers. . . .

THE COMMISSIONER. Now, when you went ahead on the corridor to get to the elevator, did you see any staff from the kitchen come out on the corridor?

- A. Yes, I did. Mr. O'Connell was there and a number of workers from the kitchen.



Q. Were the workers inmates?

A. Yes, they were.

Q. And what happened?

A. Mr. O'Connell grabbed them and was sort of hustling them back into the kitchen to get them out of the way, to avoid any further injury, any altercation.

Q. And did Mr. O'Connell assist in the subduing of Mr. Bowins at all?

A. Not to my knowledge. At no time did I see him in that area.

Q. Might he have assisted in some way without your seeing him?

A. No, I don't think so.

When Kennedy was able to extricate himself from the cart, he stated, Bowins was "pretty well under control".

How an incident involving a single inmate can get out of control was shown by the next statement of Kennedy.

A. Now there were chaps there from the kitchen and I was a little bit alarmed because there was quite a number of inmates and they were in the custody of Mr. Simpson and Mr. Hogg and they were coming out of the showers and progressing to go up the stairs.

MR. MCRAE. This was earlier now?

A. These were court men. . . . And they were there and they did show a little bit of concern as to whether or not they would break, and had they broken at that time we definitely would have been outnumbered and there would have been a security problem.

Q. Well how many inmates were coming through from the showers?

A. I would say there were in the vicinity of at least a dozen or more.

Q. This was when you went back?

A. Right. And then Mr. Hogg and Mr. Simpson got them upstairs and we progressed along the corridor. . . . This is why I was quite alarmed because you know my own personal opinion if I may make a suggestion here, had he been kicked and beaten and so on as is alleged, I am quite sure that these other inmates definitely would have joined in. They would have broken.

Kennedy denied hitting or kicking Bowins and also stated that he did not see any other correctional officer hit him. He further gave negative evidence as to seeing any injury to Bowins or witnessing Bowins striking MacDonald. He further denied Bowins' evidence that he kicked Bowins or attempted to kick him in the groin.

When Bowins left the elevator on the segregation floor, Kennedy said, he was "again in a frog walk".

A. He was still belligerent. He was still threatening. And he was still cursing and swearing, and so on and so forth. He was still attempting to break loose, break free of any holds that were applied to him. At first he refused to take his clothes off. He was undressed in the segregation area.

Q. By whom?

A. I don't know who it was. I honestly couldn't say, but someone started to undress him. Since it was jail clothing they just more or less tore them off and

he was put into the segregation area.

Q. All right. Did anybody find it necessary to strike him? . . . On the landing outside the segregation cell?

A. Not to my knowledge.

Q. Well, you were there?

A. I didn't see anyone strike him.

Q. My point is, you were there and if that had happened you would have seen it?

A. There were adequate people there to hold him, sir, so it wasn't necessary.

Q. Did you see anybody do it?

A. No, I didn't. . . .

THE COMMISSIONER. Might someone have hit him without you seeing it?

A. That would be possible, yes, but I didn't see anyone hit him.

Kennedy denied Bowins' evidence that he and C.O. 2 Edward Dowhey entered the segregation cell and tried to hit him, and he did not recall Dowhey being there. Indeed, the evidence indicated that Dowhey was not employed in the jail at that time. He said that he did not go into the cell with Bowins nor did he see any other correctional officer go in.

It was Kennedy's belief that Bowins was left in segregation "completely nude".

Q. Why wasn't he given baby dolls?

A. I think it was because we looked for them and there weren't any at that time.

Kennedy stated that he was examined by a doctor the next day and that there were possible injuries to the muscles in the arms and back. The medical injury report contained a handwritten note of Dr. Dickinson: "Bruise left arm, pain right groin and leg."

Q. When he was put in segregation without clothing on, could you see any injury to his body, his person?

A. There were a few red marks from the scuffle but they were very superficial, no cuts or bruises.

Q. No bleeding from the mouth?

A. I did not see that.

In Kennedy's report to the Superintendent he used language similar to that used by other correctional officers in their reports. He reported that Bowins appeared to have gone berserk. "This inmate was so violent that, if force had not been used to subdue him, more serious injuries would have resulted, and been incurred on staff members."

According to the report, Kennedy believed that the use of force was necessary in this instance.

When Bowins was recalled, following the evidence of Kennedy, Mr. Carter attacked his credibility on some collateral matters and with some degree of success. Mr. Carter was able to cast some doubt upon Bowins' credibility, particularly with reference to the incident complained of, but, once again, I attach less importance to the question of who was struck first than to the

physical confrontation that occurred and the matter of how such confrontation originated and might be avoided in the future.

## EVIDENCE OF DAVID WEBSTER COCKBURN

The oral evidence of C.O. 2 Cockburn corresponded in general with the written report he had submitted. Describing one part of the episode, Cockburn gave evidence as follows.

A. When he struck Mr. MacDonald, we grabbed him and tried to take him down the stairs, struggling pretty bad. Before [we were] half way down the stairs I noticed Mr. Cameron go down the stairs head first. . . . Mr. Cameron had one arm and I had the other arm. Mr. Cameron went down and I went down and Bowins jumped over us and went down the stairs right up against the wall. . . . He was standing up. He had his fists up and shouted come and get me, something to that nature.

Bowins struggled on the way to segregation and in the segregation area, but Cockburn did not see anyone punch him.

As for the episode outside the kitchen and in the vicinity of the elevator entrance in the basement, Cockburn recalled that O'Connell was on duty that day but he did not recall O'Connell being present during the Bowins incident.

Cockburn said he had received some injuries while working at the Toronto Jail. "I got belted in the face quite a bit in the last year or two. I was kicked last year. . . . I was kicked a few times on the face."

He was questioned as to whether these injuries may have had some bearing on his leaving the Toronto Jail and taking up similar employment in Scotland. He said: "It is just that I feel I got a better job, better prospects." He had at one time voiced the opinion before the Commission that discipline was too lax at the Toronto Jail and that he preferred the system in the United Kingdom.

## EVIDENCE OF GORDON CAMERON

C.O. 2 Cameron was 5'9" in height and weighed 220 pounds. He was 30 years of age and had joined the Ministry of Correctional Services in September 1968. He was from the United Kingdom. His oral evidence was an extension and amplification of his written report and generally was in the same tenor.

On the matter of the laying of charges against Bowins, he did not know

why he was advised to lay charges, but "it came direct from the Superintendent through a senior officer that we should".

## EVIDENCE OF CARDIGAN PIRRIE WILLIAMS

C.O. 2 Williams came originally from New Zealand. He was 49, was 6' tall and weighed 220 pounds. He had a pleasing personality and gave the impression of being a dedicated correctional officer.

In his statement he referred to Bowins going "completely berserk". In amplifying his statement in his oral evidence, he stated that when MacDonald advised Bowins that he was going to segregation, Bowins became rebellious and stated, "There is no way that I am going to the segregation cells."

Williams related that Bowins was told by MacDonald that he would be given an opportunity to see the Superintendent. He could not recall whether MacDonald also added "in the morning". He said that Bowins "then started to walk out of the shower room area and towards the basement . . . we thought he was going to go quietly to the segregation cells".

MR. MCRAE. Were you asked by Mr. MacDonald to assist?

A. That's correct. . . .

Q. So you followed along behind Bowins as he walked, you thought quietly, heading towards segregation?

A. Correct. . . . Then he suddenly darted up the stairs to 7 and 8 corridor.

Q. Did he have your permission to do that?

A. No. I followed and I think Mr. MacDonald followed. . . . Bowins arrived at the top of the stairway and he more or less backed up against the screen on the landing. . . . Mr. MacDonald again asked Bowins, would he go quietly to the segregation cells, and Bowins again refused. He shouted out, "There's no way that I am going to the segregation cells." I might add that 8 corridor was full of other inmates who had just returned from court. . . . Mr. MacDonald and myself moved towards Bowins to more or less try and escort him from the landing down the stairs. He started to throw punches —

Q. With his fists?

A. Correct. And we more or less pushed him towards the top of the stairway.

Q. Did he land any punches?

A. I can't recall. He may have. He never struck me.

Q. Where was Mr. Cameron at this point?

A. I think he was on the landing too. I think he just came up the stairs.

Q. You say he started to throw punches. In what direction was he throwing them?

A. Well, he was throwing them at Mr. MacDonald and myself.

Q. What about Mr. Cameron?

A. I'm not sure if he was throwing them at him. He went towards the top of the stairway —

Q. Did he throw any punches at Mr. MacDonald?

A. He may have but I didn't see any punches land on Mr. MacDonald. Bowins grabbed hold of the railing —

Q. Someone took a physical hold on Bowins, I take it, before that?

A. Well, I had hold of one of his arms and I think Mr. MacDonald had some sort of a headlock on him. With one hand I had hold of the rail, steadying myself. . . . Bowins was struggling violently and we started to move down the stairway. I think Mr. Cameron was around in front of Bowins by this time and just by weight of numbers I think Bowins slipped and Mr. Cameron fell down and Bowins fell down on top of him, and they both rolled down the stairway to the basement.

Q. Mr. Cameron went down first?

A. Right. Bowins went over the top of him.

Q. Did Bowins fall?

A. Correct.

Q. He lost his footing completely?

A. Right.

Q. He was on his back?

A. Well, he went head over heels. I would have fallen too, but I still had hold of the railing.

Williams stated that, at the foot of the stairs, Bowins "got to his feet and started to throw more punches, and he was kicking wildly with his feet".

It was Williams' impression that they were then joined by Mr. Cockburn.

A. I managed to get behind Bowins and grabbed him in a bear hug and he made a movement with his hands behind him to try to grab my private parts but he didn't succeed and eventually Bowins was restrained. We got hold of his arms and his legs and we more or less, as Mr. MacDonald said, frog-marched along the passageway towards the new building.

Q. When you say you got hold of his legs and arms, do you mean that one correctional officer got ahold of one leg and another correctional officer the other leg and —

A. At first just to immobilize him. We brought him to his feet and we had armlocks behind him and proceeded along the passageway towards the new building.

Q. Did you see Correctional Officer Kennedy involve himself in this?

A. Yes. After we were marching him along the passageway I remember him being there.

Williams denied striking Bowins with his fist or kicking him.

Q. Did you see any other correctional officer — and we are dealing with the area at the top of the stairs and the area at the bottom of the stairs — kick him or hit him or punch him?

A. No, sir. His arms were grabbed and he was sort of grappled with but no one struck him . . . or kicked him. . . .

Q. Did anything unusual happen outside of the elevator or anywhere in the



tunnel involving the inmate Bowins and Correctional Officer O'Connell?

A. I can't recall. I don't think so. . . .

Q. Would you describe how he was taken out of the elevator and into the segregation cell?

A. He was frog-marched around to the back of the segregation cells and he was told to remove his clothes which he did. He was given a sort of canvas gown, baby dolls we call them . . . and he was placed in the segregation cell.

Q. Did anybody punch him?

A. No.

Q. Or hit him in the area on the landing outside of the segregation cells?

A. No, sir.

Q. Did anyone go in the cell with him and hit him or punch him?

A. No, sir.

Q. Or kick him?

A. No, sir.

Q. Did anyone go into the cell with him at all?

A. No, he went in quietly.

Q. Was Mr. Dowhey there?

A. I can't recall him being there.

Q. And you are sure Mr. Kennedy and Mr. Dowhey didn't go in the cell with him?

A. Correct.

As may be seen, Williams' evidence differed from that of others as to whether Bowins was dressed in baby dolls or was nude. Williams' recall may have been influenced by the fact that the wearing of the segregation garment was more usual. Williams was referred to Bowins' evidence as to what occurred on the 7 and 8 landing.

Q. He says that you grabbed him from behind while the nurse was still there . . . he was spun around, grabbed by everybody, and they started pushing him towards the stairs. That part is true?

A. Correct. A certain amount of force had to be used to get him moving again . . . because there was no way that he would go of his own volition.

Q. . . . he testified that you kicked him in the neck and at the foot of the stairs.

A. Untrue. He was not punched or kicked at all at any stage.

Q. Did you not kick him in the neck?

A. No. . . .

Q. Could you have kneed him in the neck?

A. No way, not possible.

Q. You did not?

A. I might add that when he rolled down to the bottom of the stairway there were three or four other inmates coming through from the shower. And there were two shower-room officers there, Mr. Hogg, I think, and Mr. Simpson. I am sure if too much force or excessive force was being used on Bowins these other inmates would have done something about it.

Q. Well, they say that they had to be restrained and they were shouting to all the officers who were involved with Bowins, to take it easy and to stop. Did you

hear anything like that?

A. I think I heard one or two of the inmates. I am sure that if excessive force had have been used they would have done something about it.

Q. Well, they could not very well physically do anything if they were outnumbered. Could they? Is that what you mean?

A. They could have made something, a report or something of that nature.

With reference to the last comment of Williams, there was evidence that other inmates had shouted in the basement area as a result of what they saw occurring there.

## EVIDENCE OF ROBERT SIMPSON

C.O. 2 Simpson and C.O. 2 James Loran were the two union representatives at the Toronto Jail. At the time of giving evidence, Simpson was 40 years of age. He was born in Scotland, was 5'8" in height, and weighed 168 pounds.

He gave evidence for the first time before the Commission in the Bowins matter on April 4, 1975. He had taken a six-month correspondence course and a three-week training course at Guelph.

He stated that he had worked for three years in the shower and admitting area, where he was on duty at the time of the Bowins incident on December 6, 1973.

A. He [Bowins] came in from the search room area, put his clothing on the table and told me he was going back to court. The normal procedure for someone going back to court the following day is to keep their own clothing. MR. MCRAE. You just take their clothing when they come in and hand it out to them again?

A. They just keep it if they tell me they are going back to court. is the normal procedure. . . . They take it into the shower area and put it on a bench. . . .

Q. Where did you get the information he was going to segregation?

A. Mr. MacDonald informed me. . . .

Q. You told him he was going to segregation and you wanted his clothing?

A. That's right. . . . He got uptight about it. . . . He said he wasn't giving his clothing back.

Q. Would you describe his demeanor exactly and how he said it and exactly what he said? . . .

A. He was abusive, rebellious. . . . I just can't remember his exact words, but he said, "I'm not going to segregation" – or words to that effect. And he said, "It's going to take four or five of you pigs to take me over there." . . . There were only two officers involved and there were four or five other inmates in the area. There was no way we could have stood up to them. And just at that time Mr. Williams came in from the search area, from the back of the search area. . . . And Mr. MacDonald came in from the passageway. . . . Then he directed

his question to Mr. MacDonald. He was the senior officer and he told him he was going to segregation and to give up the clothing. He cooled down when he seen these two officers in the area and handed over his clothing, and we gave him blues. . . . He put his blues on and then he walked around into the shower room area. And that was out of my sight. And I don't know what happened to him after that. . . .

Q. What about Mr. MacDonald and Mr. Williams, did they follow him?

A. They followed. They were under the impression that he was walking out to segregation. . . . Because they didn't take hold of him or nothing. . . . The next thing that happened was a couple of minutes later Mr. Hogg and I were escorting three or four other guys, or five or six, I don't know how many, up to 7 and 8 corridors.

Q. Who were they?

A. Pereira was there, and Duxtater and Stoffers.

Q. Anybody else?

A. Well, there were other guys, but I don't know their names. . . . They were behind me and in front of Mr. Hogg, as I recall. . . . Just as we came out into the basement passage, there was a scuffle there, and one of the officers came off the steps. I don't know which one it was, but it was the officer I saw first lying on the ground . . . just at the bottom of the stairway.

Q. Right on the floor of the passage?

A. Yes. Then there was Bowins and another officer – I don't know who it was – or in which order they came down – but Bowins was in between, as I recall it. And I turned around to shove the inmates back into the passageway again, back into the showers. However, they were interested to see what was going on and they just pushed forward . . . when I turned around Bowins was on his feet and struggling with a couple of officers. . . . He was swinging his arms and kicking his feet.

Q. What were the correctional officers doing?

A. Trying to hold him down.

Q. Did they punch him or kick him or hit him?

A. Not that I seen. They were trying to ward the punches off, not trying to throw some in, they were trying to ward them off. . . .

Q. You didn't see Bowins hit anybody?

A. I did not.

Q. And you didn't see anybody hit Bowins?

A. I did not. . . . Mr. Bowins wasn't going very easily. His arms were swinging, so they made a grab for his arms. He was also swinging his legs, so they made a grab for his legs.

Q. So they took him by the arms and legs?

A. Yes.

Q. Did they lift him off the floor?

A. No, they weren't getting that good a grip on him. They were pulling and dragging, trying to keep him down. They weren't too successful at first.

Q. Did they eventually get him under control?

A. Eventually yes. . . .

Q. How did they take him off down the hall?

A. They frog-marched him. . . .

Q. They didn't drag him?

A. They were dragging him in the first instance, but eventually they overcame him and walked him.

Q. What were you doing in the meantime?

A. Well, I had a couple of [his] friends with me by the name of Stoffers and Duxtater. And Stoffers was rather hotheaded as well, and he tried to go to the aid of Mr. Bowins. And Mr. Hogg grabbed him in a headlock, and I assisted Mr. Hogg in that.

Q. What about the other inmates?

A. Duxtater was calm. He tried to get Stoffers to remain the same way.

Q. Did he throw any blows at Mr. Hogg?

A. No.

Q. Nor did Mr. Hogg punch him while he was being held?

A. No.

Q. Go ahead and tell us what happened after that?

A. They were marched off along the hallway and we wouldn't release anyone — we wouldn't release Stoffers until he assured us he would go upstairs quietly. The rest of them went upstairs just by asking them. He eventually quieted down and said he would go upstairs and we released him and that was it.

## EVIDENCE OF HERBERT HOGG

The evidence of C.O. 2 Hogg was similar to and confirmatory of the evidence of C.O. 2 Robert Simpson.

## EVIDENCE OF JOHN FRANCIS O'CONNELL

This witness was 30 at the time of giving evidence and was employed as a cook. He was 5'8" in height and weighed 180 pounds. He had completed Grade VIII in Ireland and had worked as a cook in a hotel in Ireland for seven years. In October 1966 he emigrated to Canada and worked as a relief chef at the Royal York Hotel until he was hired by the Ministry in November 1968.

He stated, "I am not a correctional officer but I have 36 inmates sometimes, alone, completely alone in the kitchen."

MR. MCRAE. While you do not actually supervise inmates, you do have to supervise the ones that are working with you in the kitchen?

A. Yes.

Q. Keeping track of kitchen utensils such as knives and things like that?

A. That is correct.

Q. But you have never been responsible for taking custody of the inmates?

A. Well, they are in your area so we just detail out the work and these guys are trusted. You explain to them how it is done and they go ahead and do it. You are checking up on them all the time. We do not have too many problems. They try their best.

THE COMMISSIONER. Pardon me, suppose they do not obey your orders, what happens then?

A. Most of the inmates obey the orders, the kitchen help, because it is sort of a privilege to work in the kitchen. . . .

Q. What I am wondering is, if they disobeyed an order that you gave, who would discipline them?

A. We would refer them to the Chief.

O'Connell recalled the Bowins incident. He stated that he had not known Bowins before.

A. I had completed my shift that evening. . . . After changing I heard some noise out in the hall which again is not unusual. . . . So I went . . . up the hall . . . what I saw then was a group of guards having a big problem with this inmate. I rushed to the area . . . and one of the inmate's legs was kicking loose at the time. So I believe I grabbed it for about, maybe, 10 to 20 feet and some other officers came behind and took over. I went back to the changing room and took my keys out, and went up the hallway and went home. . . .

Q. So that somewhere, midway down the tunnel, if I can use the expression, when you let go, they had him on his feet, and the other correctional officers, had him on his feet?

A. Yes. He was struggling very violently and kicking. I do not think he was kicking any specific person, just keep away, like, you know. . . .

Q. What were the guards doing about subduing him, carrying him. Were they punching him or kicking him? . . .

A. No, certainly not. They were trying to restrain him from either himself or hurting somebody else.

O'Connell was specifically referred to Bowins' evidence: "He [O'Connell] came up and he kicked me in the armpit and down on my ribs, three to four times . . ."

A. He wasn't kicked at all.

Q. By you?

A. By me or by anyone else.

He also denied Bowins' allegation that he was wearing a white hat, stating that he had never worn one.

O'Connell agreed that no one had called to him to come to assist in subduing Bowins.

THE COMMISSIONER. Did you not think that you were exceeding your terms of



employment by involving yourself in a disciplinary action that had nothing to do with the kitchen?

A. Yes, maybe, but when a situation like that comes along where . . . they are dealing with a very violent man ———

Q. There was an instinctive reaction on your part?

A. Yes. . . . I felt that it was necessary to do something.

## EVIDENCE OF STANLEY FRANK JOHNSON

C.O. 5 Johnson gave evidence before the Commission for the first time with reference to the Bowins incident. He appeared on five later occasions with reference to various allegations, and was named in some of the read-in reports. He also gave evidence in the non-public hearings on the subject of training, and was subsequently engaged as training officer at the Toronto Jail.

He stated that he was 49, was born in Newfoundland, and completed Grade X there. He was 5'11" in height and weighed 190 pounds. He joined the Ministry in February 1961.

He took a six-week basic training course for correctional officers at Guelph in 1964. In other words, he was employed for three years before taking this course, and he stated that at that time the course was on a voluntary basis.

The training program for correctional officers has therefore improved over the years and it is hoped that, with the recommendations made by this Commission and the Ministry's present plans for training in the future, there will be continued improvement in this important area.

Johnson indicated that when he attended the Guelph course in 1964 the main subjects were psychology, first aid, and physical training. Following that course he also took part in the correspondence course and attended three seminars on management and a further correspondence course on handling jail personnel. He also took a course for officers in charge of shifts. In 1971 he worked for a time as a deputy superintendent at the Hamilton Jail.

Johnson related that his involvement with Bowins was very limited. He said that part of his duty was to check on inmates in the segregation area.

THE COMMISSIONER. . . . did you see him [Bowins] that afternoon?

A. I did, yes.

Q. And do you recall his condition, and do you recall talking to him?

A. I spoke to him briefly. I said, "How are you Bowins?" I have known Bowins for some time. Personally I have had no problems with Bowins.

Q. How was he dressed when you spoke to him?

A. He was dressed in segregation — sort of a smock. . . .

Q. You are sure about that?

A. Pretty well sure.

Q. He wasn't naked?

A. I don't think so, no.

Q. Were there any complaints?

A. There was no complaints made at that time to me.

Q. Do you recall your conversation with him?

A. The conversation was – I said “Bowins, what have you been up to now?” I usually talk to him and get along with him. . . . There was no complaint made about a beating or anything at that time.

Q. Did you see any injury on him at that time or any sign of bruising or abrasion?

A. I can’t recall seeing any injuries on him. There certainly was no complaints made to me at that time.

## EVIDENCE OF GERALD PERCY WHITEHEAD

Mr. Whitehead stated that he was Superintendent of the Toronto Jail on December 6, 1973, when the Bowins incident occurred. At the time of giving evidence (April 7, 1975), he was Executive Assistant to the Executive Director of Adult Programmes with the Ministry of Correctional Services. His term as Superintendent of the Toronto Jail was from January 1965 to June 1974.

He first heard of the incident when he saw the charge sheet on the morning of December 7.

A. I remember making some inquiries as to circumstances surrounding this, and I concluded from that that injuries were obviously received, but it was not a proper matter I could deal with; that I felt it was a matter the police should handle. so I telephoned 55 Division and asked them to send an officer down to investigate.

MR. MCRAE. You were supplied with written statements from each of the correctional officers involved?

A. To the best of my knowledge.

As in the Frost matter, Mr. Whitehead, upon learning of an encounter between correctional officers and an inmate in which injuries were sustained, took what I consider commendable and preferable action in having the matter investigated by an outside agency, namely the Metropolitan Toronto Police Department, and, more particularly, the division in which the Toronto Jail is geographically located.

If a Toronto Jail Council is created, then such incidents could be reviewed by the Jail Council after both an internal and outside investigation.

Mr. Whitehead stated that two police officers, one of whom was Sergeant Sidney Sweeting, attended to conduct the investigation.

A. They investigated the matter and to the best of my belief Sergeant Sweeting advised me that it would be appropriate for charges to be laid in court against

Bowins by the officers who had been assaulted. . . . He felt it would be appropriate. I advised the officers to the best of my knowledge, particularly Mr. MacDonald I think would be the one I spoke to, that he had the option to lay charges in court or he could let me take the steps as an internal disciplinary matter and he elected to lay the charges in court. I always do this in a case of assault. I think the officers have that right but 95 per cent of the time they usually opt not to go to court. . . . The option would be given to the officer that he could. It's purely a personal decision in this type of matter.

MR. MCRAE. Did you yourself speak to Mr. Bowins?

A. I don't believe I did. I took no action on the Misconduct Report because charges were laid.

Q. All right, so you didn't treat it as an internal matter and you didn't send him to segregation?

A. No, I did not.

Q. Because charges were being laid by correctional officers?

A. That's correct. . . .

## EVIDENCE OF SIDNEY WATERS SWEETING

The gist of Sergeant Sweeting's evidence was given in answer to a question by Commission counsel, Mr. McRae.

He said his involvement began at 8:50 a.m. on December 7 when Mr. Whitehead telephoned the 55 Division detective's office, where he was on duty. "He gave me information which he was relating to me from reports on his desk at that time in relation to an assault which had taken place on four guards by a prisoner the previous evening, December 6. However, at that time, I was informed by Superintendent Whitehead that the prisoner in question, whose name I didn't know at that time, and the four guards were not in the jail at that time. The prisoner was in court and the guards were off duty."

Sergeant Sweeting stated that he learned that Bowins, while in court, had made certain allegations. As a result, he attended at the court house. "[I] spoke to various people there. Amongst them was Franklin Roy Moskoff, Assistant Crown Attorney for the County of York. . . . This was the first time I became aware that the person making the allegations was . . . Michael Richard Bowins. I was informed that Bowins had stated to his attorney that he had been assaulted . . . in the jail. . . . [Mr.] Moskoff requested us to commence an investigation."

Sergeant Sweeting said he took a statement from Bowins about his alleged assault. He was questioned by Mr. McRae:

MR. MCRAE. Did you take any steps to charge the correctional officers or to charge Mr. Bowins with assaulting them?

A. No, I felt there was not sufficient evidence to charge the correctional officers.

Under normal circumstances there would have been sufficient evidence for me, as an investigative police officer, to charge Bowins. However, in talking to the Assistant Crown Attorney Moskoff, he advised us that because of the situation of [Bowins'] on-going trial, that we advise the various guards at the Don Jail to . . . take out their own summonses. This was done. The summonses have not been served. The police had been unable to trace Mr. Bowins until this date.

Q. You should have asked us. But informations were sworn?

A. Informations were sworn. And four summonses were issued. Again, I don't have them with me and I cannot give you the exact things, but there was one aggravated and three common assaults. . . . I believe the aggravated was Mr. MacDonald. The other three were the other guards.

As for Bowins' right to lay a charge against the correctional officers:

Q. Did you advise Mr. Bowins of his right to lay a charge against the correctional officers?

A. Yes. Indirectly. Again, because of the fact that the trial was on-going at that time, we furnished Mr. Dempsey with the information. He was Mr. Bowins' counsel at that time. We furnished him with the information, the names and addresses and ages of all of the guards concerned.

Q. How many guards' names did you give him, sir?

A. I think six. We gave him all the names of all the guards whose statements were taken.

Q. And your part of the investigation then would be completed, I take it?

A. That was the end of my part of the investigation.

A Jail Council, on a review of the police investigation of the Bowins' incident (if such a council had existed at that time), might have requested a more detailed investigation. In any case, the evidence presented to the Commission on this matter constituted a full and detailed inquiry.

## BOWINS SUMMARY

The Bowins incident puts one in mind of a nursery rhyme – “For the want of a nail, the horseshoe was lost . . .” In the present case, the initiating factor was an elastic band. Although, as Wilson and Haddow indicated, the elastic could be used in a dangerous manner, the fact was that it was not being used improperly at the time Haddow demanded it from Bowins. There was right and wrong on both sides. Bowins was on his way to court and may have been concerned about the criminal charges pending against him. Although the elastic band was considered contraband because of its possible wrongful and dangerous use, it had been given to Bowins by one of the nurses for a legitimate purpose. Bowins may, therefore, have felt some sense of injustice at being asked to give it up. Haddow's motivation was properly founded.



When he met with Bowins' resistance, it would not make the noisy, crowded, and time-pressed conditions in the rotunda any easier to cope with.

In quiet retrospect the matter was not handled in the most diplomatic manner. Maybe forethought would have dictated the stocking of headbands similar to that adopted by tennis star Bjorn Borg. A more practical and immediate solution would have been for Haddow to refer the matter to Wilson, a senior officer, who was nearby. Wilson, with a lower-keyed approach, experienced no difficulty in having Bowins subsequently hand over the elastic. In such a minor incident (as it should have been at the time) one may see not only the problems confronting correctional officers but the importance of selecting staff that is temperamentally suited and properly trained, and able to effectively solve such problems without having them blaze up in the tinder-box atmosphere of a jail.

For those who have never entered a custodial institution, it may be difficult to appreciate the sensitivities that jealously attach what might be considered exaggerated importance to small privileges and possessions. In this case, there was initial disobedience to Haddow's order, coupled with a threatening gesture. Haddow was quick to write out a misconduct charge. Perhaps it was a matter that should have been forgotten or overlooked. That appears to have been the situation with Bowins, for he was apparently surprised to be informed on his return to jail, later in the day, that he was being taken to segregation. When he inquired why and was not given an answer, he demanded to see a senior officer. There may have been some honest misunderstanding both ways, as to whether he was allowed to proceed upstairs for this purpose or hastily took it upon himself to do so. If the matter had been badly handled up to then, it was worsened by the failure to permit him to see and speak to C.O. 5 Johnson. If he thought he had been unfairly treated earlier, his sense of injustice was considerably increased. I have no doubt that he became aggressive and that when attempts were made to control him, he became violent, as alleged. With each increase of rage on his part came additional force on the part of the correctional staff in their attempts to control him and take him to segregation. Was excessive force used against Bowins? The answer would be "No," if the test was force that was necessary to control him and carry out the order for segregation. The answer would be "Yes," if the guideline was the whole incident itself, for if properly and sensibly handled it should never have deteriorated to the "can of worms" Kennedy described.

The medical and other evidence as to the extent of injury sustained by Bowins, as against that sustained by some of the correctional officers, showed that he gave better than he received in a struggle that never should have been. Since the matter came before the Commission by way of an allegation by Nurse Jane Mannerholm, some comment should be made about her claim that Bowins was punched as a result of his calling to her. She saw just one frame of what might be likened to a film sequence. There was a struggle going on at the time, no doubt with punch and counterpunch. Therefore, I do not believe that the blow described by Miss Mannerholm was in response to Bowins speaking to her.

With reference to the trek down the stairs from 7 and 8 landing to the



basement, since Cameron also fell, I do not believe that Bowins was deliberately pushed. As for the "interference" of O'Connell, he was not acting within his duties, but one could well understand his action in helping to restrain an inmate, when he was standing nearby and thought his assistance necessary to prevent a situation from deteriorating. Such actions by auxiliary personnel should rarely be necessary. This may have been one of the times when it was justified. I make no adverse finding against O'Connell.

As for the total effect of all actions by the correctional officers, the medical and other evidence convincingly refuted Bowins' allegations as to their severity. This being so, and since Dowhey, who was named by Bowins as being present, was not employed at the jail at the time, I cannot accept Bowins' claim that he was assaulted in a segregation cell after having been placed there. Had this been otherwise, it would have constituted unnecessary force, for he was by that time under control and did not constitute any threat.

# The Naborczyk Allegation

*"Q. So then you really never told anybody the details that you are telling here today, prior to coming here? A. No. Q. Is that right? A. That's right, except Mr. Dassy." (Jane Mannerholm)*

## EVIDENCE OF JANE MANNERHOLM

Nurse Mannerholm made mention of an incident involving an inmate by the name of Adam Naborczyk. This was the last of six incidents in which she specifically made reference to excessive use of force. The other five involved two unidentified inmates and inmates Somerton, Nembhard, and Bowins. She stated that this incident occurred in August or September 1974.

She alleged that C.O. 2 William Stafford and C.O. 1 Gerald Rowsell "came pushing an inmate into surgery". She estimated the time at about 11:30 p.m.

A. They [Stafford and Rowsell] said the inmate wanted a sleeping pill and the officers were pushing him around. The inmate was upset because he was told he could not get a sleeping pill by the officers and they took him in and sat him on the chair in surgery and he was trying to explain something while he was high on drugs. . . . They were shaking him and the glasses fell off and they fell apart. They were put together with tape as far as I remember.

MR. MCRAE. I'm sorry you are going a little quickly, who shook him?

A. Mr. Rowsell and Mr. Stafford. . . .

Q. What was the inmate doing at the time?

A. He was sitting on a chair trying to explain to me why he wanted the sleeping pill, I suppose.

Q. How did they shake him?

A. By the shoulder.

THE COMMISSIONER. How about the force that was used in the shaking? Was it gentle, moderate, severe, excessive, or how would you describe the force that was used in the shaking?

A. Between moderate and severe.

Q. Was there any reason why they were doing it?

A. Not that I could see. It was much easier to talk to the inmate and explain why he could not have a sleeping pill and so on or crush up two blanks and give to him and say this is a sleeping pill. That is the normal procedure.

Q. The inmate is sitting in the chair explaining to you why he needs sleeping pills?

A. Yes, he cannot sleep, he says.

Q. Did he tell you he was high on drugs, too?

A. No, but I think he is a heroin addict.

Q. You think he is a heroin addict?

A. Yes.

Q. And you told him he could not have a sleeping pill.

A. That is the usual procedure. They don't give drug addicts any kind of pills when they come into the jail.

This is another example of the need to have a medical doctor on duty at the jail at all times. Apparently this was a situation Miss Mannerholm could not properly cope with. It may well be that a doctor would have viewed the case differently. It is asking too much of a nurse to deal with this type of situation, and it is most unlikely that she would telephone a doctor at 11:30 at night for advice. The end result is that the inmate does not receive any treatment at the time.

Although the force used up to this point involved just shaking the inmate, this is more a reflection of the attitude of correctional officers than anything that could strictly be termed excessive use of force.

Miss Mannerholm adopted different tactics. She said she "talked to him and he calmed down".

Her evidence was that the inmate was not physically injured by the shaking and that when his glasses fell off she repaired them with surgical tape. The correctional officers then took the inmate out, returning him to his corridor.

Q. Were they using more force on him after they took him out or while they took him out?

A. About the same. They pushed him out. . . .

Q. Would you say this was excessive force under those circumstances?

A. I would say so.

Q. You would say so?

THE COMMISSIONER. Was he injured at all by the pushing?

A. No.

Although the interpretation of "excessive force" is, under certain circumstances, a subjective interpretation, in the scale of things one would not place this very high.

On being questioned as to whether or not she had made a report of this incident in her log, Miss Mannerholm thought she did. On searching the log, there was indeed a notation of Naborczyk's visit to surgery, but there was no reference at all to Stafford or Rowsell or their alleged treatment of the inmate.

Naborczyk must have been causing some disturbance in the corridor, to have been taken by two correctional officers to surgery. This did indicate, however, that they did give consideration to the problem. Whether it was out of concern for the inmate, or for other inmates, or for themselves in that the inmate may have been making some disturbance, the matter was attended to in such a way that the inmate's interests were looked after. The problem was resolved in surgery rather than by putting Naborczyk in segregation.

The action by the nurse was just to talk to the inmate and calm him down. This would relieve his agitation but would not relieve his sleeping problem. Confinement and the lack of privacy may well have aggravated this problem. Also, if Miss Mannerholm was correct in saying that the inmate was a drug addict, then this is a reminder that there should be some specified area in the jail that these people could be housed away from the general population.

On cross-examination, Mr. Carter brought out the fact that Miss Mannerholm really did not have much information on the incident.

Miss Mannerholm indicated that Dassy was the first person she told about this incident. Afterwards, she told Miss Kaye Fulton of the *Toronto Star* that she had witnessed "five or six beatings" but she did not tell Miss Fulton who was involved.

MR. CARTER. Now, did you tell Miss Fulton about all of these occurrences at the same time?

A. I only told her I had witnessed five or six beatings.

Q. And you didn't tell her what they were?

A. No.

Q. So then you really never told anybody the details that you are telling here today prior to coming here?

A. No.

Q. Is that right?

A. That's right, except Mr. Dassy.

Miss Mannerholm said that if she witnessed an assault upon an inmate she understood that "you don't squeal on anyone you are working with". She said that she had not received any instructions to this effect. On being questioned by her counsel, she indicated that it was an assumption on her part. She also contended that it was a result of conversation with the nursing staff. She stated that the rules and regulations were "the same in all hospitals" as far as the treatment of patients was concerned, and that, as far as the Toronto Jail was concerned, "I understood what the score was . . . not to tell on anyone."

This generalization must, of course, be read in the light of the detailed

evidence considered with reference to her allegations, all of which have been reviewed.

On cross-examination by Mr. Carter she referred to knowing the score as knowing "how to treat the people and the staff and how to supervise staff", and further that this was the normal training of a nurse.

She was questioned by Mr. Carter as to instructions she received at the Toronto Jail in connection with her duties. She said that these were from Joseph Lauwers, the head nurse at the time.

Q. Did you receive any instructions as to what you were to do in the event that you witnessed any use of force?

A. No, but in some instances after some of the officers had taken me aside and said, "You have not seen anything, have you?"

Q. When did that occur?

A. A couple of times.

Q. A couple of times?

A. Yes.

Q. And when?

A. I can't recall.

Q. Shortly after you got there?

A. Yes.

Q. And were these the incidents you have talked about?

A. Yes, I think so.

Questioned further about correctional officers who had spoken to her in the above manner she said she could not remember who they were.

## NABORCZYK SUMMARY

The allegation of Miss Mannerholm fell short of demonstrating such unnecessary use of force as to call for an explanation from the correctional officers. This does not mean that the "pushing" of inmates is to be condoned. It is rather that compared with other allegations, this allegation, even if it were true, was of slight irregularity at worst. It was, therefore, of little relative assistance or significance.



# Allegations Concerning Two Unidentified Inmates

## EVIDENCE OF JANE MANNERHOLM

Miss Mannerholm related six incidents of alleged excessive use of force, and two of these will be dealt with next. In both cases she was unable to give enough data to provide a basis for a full inquiry.

The first incident occurred "just after I started in 1972 and I came through the tunnel . . . from the new building and I saw about five officers coming with an inmate through the tunnel". She was about half way through the tunnel in the old building and the five correctional officers were "punching an inmate and dragging him along the corridor in the basement".

MR. MCRAE. How were they dragging him along?

A. By the arms, punching him.

Q. And punching him, did you say?

A. Yes.

Q. How many of them were punching him?

A. I couldn't make out - it was about five, six officers around - how many was punching him.

Q. Where were they punching him? . . .

A. The upper part of the body.

Q. Are you able to identify this prisoner for us; tell us who he was?

A. No, I have no idea. He had blond hair, that's all I know.

Q. Can you tell us more accurately when it occurred, what month of '72?

A. It was about September '72, just when I started.

- Q. Can you identify any of the correctional officers?
- A. No, I have no idea who they are. . . .
- Q. Did you see what led up to the dragging of this prisoner and the punching of this prisoner, what happened before?
- A. I don't know what caused the incident at all.

Miss Mannerholm was asked about the colour of the shirts the correctional officers were wearing to which she answered, "I am not quite sure. I was too new at that time." It was her opinion that neither the correctional officers nor the inmate saw her.

- Q. Was the inmate fighting or kicking or punching or screaming?
- A. No, nothing.
- Q. Nothing.
- A. I did not hear anything.
- Q. Was he walking on his own power or being carried or what?
- A. More pushed.

No further evidence was called on this matter. Without any further information it was impossible to investigate a matter that occurred as far back as 1972 without the name of any correctional officer or of the inmate.

It should appear evident from other parts of this report that it was necessary, in order to test an allegation, to inquire into the incident in detail, for at times the validity of some claims vanished into thin air.

Another incident referred to by Miss Mannerholm occurred late in 1972. She related: "I was just outside 7 and 8 corridor and looking down the stairs and I saw an inmate flying down the stairs with three officers behind him."

The stairs she referred to were those leading from 7 and 8 corridor to the basement tunnel. She indicated that she was standing next to the rotunda opening. She said that the inmate was "trying to hold his hand to the hand-railing". She also said that "he . . . could not keep his feet on the stairs".

- Q. Did you see why he was flying down the stairs, what propelled him down in that way?
- A. I suppose they pushed him down.
- Q. You suppose they pushed him down?
- A. Yes.
- Q. You did not see him being pushed down?
- A. No. They were talking in very hostile voices and went after him down the stairs.
- Q. What sort of things were they saying?
- A. I don't remember what they said.
- Q. Did he fall, is that what you are saying?
- A. I don't know if he fell downstairs. I could not see all the way down. . . .
- Q. But you saw him in the air?
- A. Yes.

Q. Did you ever see that inmate again?

A. No, I don't remember who it was at all. . . .

Miss Mannerholm stated that she did not report the incident to anyone until mentioning it to Dassy at about the same time that she related the earlier incident to him. This would be in the summer of 1974, almost two years later.

## SUMMARY

The first incident occurred in September 1972 and the second in November or December of that year. Since Miss Mannerholm was unable to identify the inmates or the correctional officers, and there was no additional information about what occurred before or afterwards, it was impossible to investigate any further. These matters were included in the report because they fell within the Commission's terms of reference, being allegations by "Jane Charlotte Mannerholm of mistreatment of inmates by the use of unnecessary force and/or physical assaults upon such inmates".

# The Blue Goose Allegations

*"Speak louder unless you want to be a couple of inches shorter than you are now." (Correctional officer to inmate William Francis Gingras (height 5'2") as alleged by Gingras)*

*"It was not our centre . . . not our bailiwick . . . there were a number of other correctional officers there . . . Don Jail employees." (Guelph correctional officer (C.O. 2 John Webster) explaining why he did not investigate sounds of "flesh hitting flesh")*

*"Yes and no. Being a man who doesn't use any more force than is necessary, I was surprised, and, no . . . I had heard by the grapevine the reputation of some Don Jail employees." (C.O. 2 John Webster on being asked whether he was surprised by the sounds he heard)*

This matter first came to the attention of the Commission during the evidence of a former line correctional officer, C.O. 1 Bruce McClay.

The incident in question occurred on October 21, 1971. Some time between 7:00 and 8:00 p.m., one of the senior officers, C.O. 5 Robert Sweeney, "rounded up" a number of correctional officers to go to the admitting area to receive some "trouble-makers" who were expected to arrive from the Guelph Reformatory. This was after the correctional staff in the admissions area would have finished its work shift and left the jail.

Ten inmates were involved in the transfer. The means employed to transfer

them were two buses, or vans, of the Ministry of Correctional Services. The vehicles used at that time to transfer inmates from one institution to another were blue and were commonly known individually as "the Blue Goose". It was indicated that the name "goose" was coined by inmates because the vehicles travelled at times in rather inclement weather but never failed to arrive at their destinations.

The journey from Guelph to Toronto on October 21, 1971, was relatively uneventful. As for the reception at the Toronto Jail, it was given two different interpretations by the witnesses.

One group, composed mostly of inmates, gave direct evidence or implied that the Toronto Jail staff was "waiting" for the arrival of the "trouble-makers" and had decided before they arrived to teach them a lesson right from the beginning and physically discipline them to ensure their good behaviour while in the Toronto Jail. Some of these inmates were designated for transfer to other institutions and the Toronto Jail was only a stopping-off place for them until their further documentation and transfer arrangements were completed.

The other interpretation of what occurred, given for the most part by the Toronto Jail correctional officers then on duty, was that the inmates concerned, who had constituted behavioural problems at the Guelph Reformatory, intended to show how tough they were and that, either by common agreement or by tacitly following certain ringleaders, they refused to co-operate in providing the necessary documentation information and generally comported themselves in a sullen and even aggressive manner.

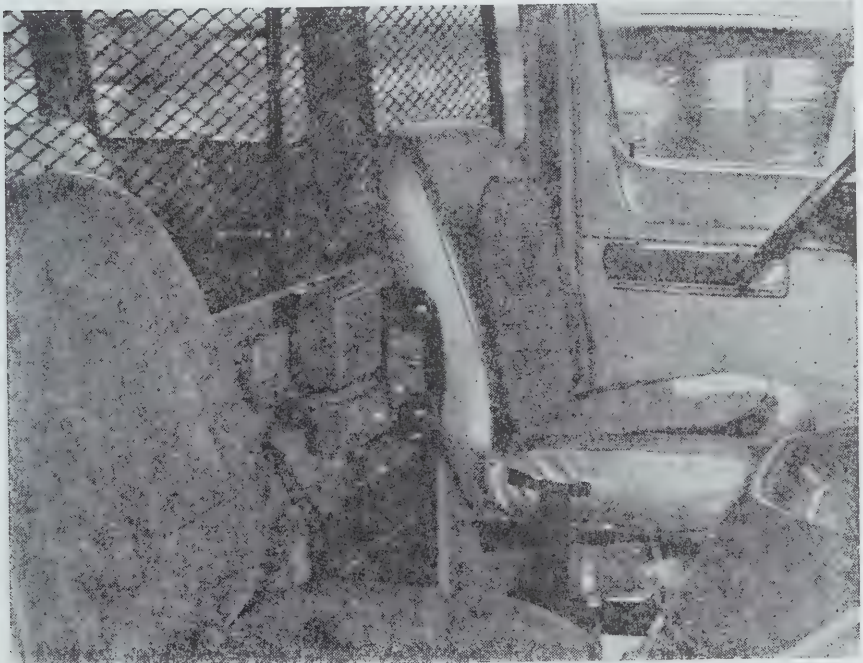
Whichever version one accepts, the fact was that there were several altercations between staff members and inmates. The next question for consideration was, whether the force used by the correctional officers was reasonable in the circumstances or excessive.

Thirty-nine witnesses were called and gave evidence on the Blue Goose incident. They fell into three groups. Eight were inmates who were involved in the transfer. (The remaining two inmates were not available to give evidence.) Nineteen, including McClay, were on the staff of the Toronto Jail at the time. The other 12 witnesses had been employed by the Guelph Reformatory. I shall comment on the evidence of some of the witnesses, grouping them under the general headings of inmates, correctional officers (Toronto), and correctional officers (Guelph).

## INMATES

COLIN JOSEPH O'HAGEN alleged he was punched in the face for not saying "sir" when speaking to one of the correctional officers. This was denied by the correctional staff, by some more strongly than by others. I believe that some staff members felt this form of address assisted in discipline. I accept the evidence of other officers that they did not consider it necessary and did





*The "Blue Goose" van, used to transport inmates between institutions.*

not insist upon it.

O'Hagen claimed that the punch was of sufficient force to hurt and even to cause him to black out. He also alleged that he was kicked by several officers and further assaulted while in the segregation area, where he received a "hard punch to the solar plexus".

He was examined the next day by Dr. Peter Dubelsten. This was a routine "admission to jail physical examination". He said that he did not remove his trousers, so that the doctor would not have been able to see any bruising that there might have been to his legs. In any event, the filed medical report revealed a negative physical examination and no complaints. O'Hagen admitted that he had not told the doctor of any assault by the officers.

CHARLES WALLACE NOSSEY alleged that he was "backhanded in the mouth" when he asked to go to segregation with some of the other Guelph inmates. He then admitted that he might have "taken a swing" at one of the officers and resisted by fighting. He claimed that he was then pushed down on a bench and that some of the staff took punches at him, with sufficient force to cause his nose to bleed. He also alleged that he was hit in the mouth when he neglected to say "sir".

Nossey claimed that later, while he was in his segregation cell, he was visited by three correctional officers, and that he was hit in the face and his nose broken. He also alleged that he received further kicks and punches.

The following morning he appeared before the Superintendent, Mr. Whitehead. The misconduct charge was that Nossey "refused to give necessary information", "refused to be searched", used obscene language, and was threatening. Nossey admitted to pleading guilty, but said he did so because he was scared. I do not accept this excuse. I think the Superintendent's note on the report gave the reason for Nossey's admission of guilt. It read, "States he will not cause any more trouble. He was upset by being transferred from Guelph."

I was advised that the transferring procedure has been changed, so that documentation now travels with the inmate, thus obviating the necessity for some of the questions that were formerly asked. Nevertheless, searching will always be necessary to prevent smuggling of weapons or other contraband. If an inmate refuses to be searched, then physical steps must be taken by the correctional officers to conduct that search, using as much force as is reasonably necessary. Unless they have to repel an assault by an inmate, the type of treatment (kicking and punching) alleged by Nossey is not justified. The amount of force that may be legally used is considered elsewhere in this report.

There was no justification for the alleged subsequent visit to the segregation cell by the three line correctional officers, if this did occur. This allegation was similar to one made by inmate Pearce against correctional officer Torrance some three and a half years later. Both the initial alleged assault and the subsequent visit to Nossey while in segregation were denied by the correctional officers concerned.

Nossey said that he requested medical attention that same night and was seen by a male nurse the following morning. He said he told the nurse that

he thought his nose was broken. After examining him, the nurse told him, "It will be OK." Nossey did not complain of any assault by a correctional officer. He said that another nurse asked how he had hurt his nose, to which he replied that he "tripped or fell down the stairs". This and similar expressions were used at other times during the hearings, apparently to conceal any more accurate information as to the cause of injury. There were not necessarily any suggestions of attacks by correctional officers on inmates when such expressions were used.

Dr. Dubelsten's report on Nossey's "admission examination" the next day was negative, both for complaints and for injuries.

GREGORY WAYNE STONNER alleged that he was assaulted on three separate occasions in the admitting area. In one of the flurries he received 8-10 blows, which knocked him down, he said. He was taken to the old segregation cells in the old building where he was kept for two hours before being transferred to 3B segregation in the new building. Considering the number of incoming inmates who had to be placed in segregation, such a temporary measure may well have been necessary.

Stonner was tried by Mr. Whitehead on October 22. The misconduct alleged against him was that while being searched he attempted to punch C.O. 2 John Archibald Stark Nisbet. The notation by Mr. Whitehead on the Misconduct Report, opposite the words "Statement by Inmate" was: "Admits - now says he is sorry for the way he behaved." Of passing interest is the fact that, although there was this admission, supported by evidence of other correctional staff, Nisbet in his evidence did not recall any inmate attempting to punch him, nor did he recall any correctional officer telling him about such an attempted punch.

As for Stonner's injuries, he said he made no complaint to anyone. The admission medical examination report was negative both for complaints and for injuries.

HENRY TIKL alleged that he was struck in the kidneys while undressing in the admission area, kicked while in the elevator on the way to segregation, and punched in the stomach while being placed in a segregation cell. He was unable to identify any correctional officer who committed any of the alleged assaults. He pleaded guilty to refusing to give information because "it is just a waste of time . . . they find you guilty anyways". Tikl, like the others, made no complaint to the doctor or anyone else.

While giving evidence Tikl supported the allegation of Nossey that he was assaulted by correctional officers during the admission procedure. He said he had not seen Nossey say or do anything to the officers, save that he "had a smile on his face". If this was a smirk rather than a smile, it could, together with unco-operative behaviour, have been as provoking as the sounded word.

ALLEN EDWARD STOKES. This inmate complained only of one jab by an unidentified officer while being questioned in the admission area. At his medical examination the next day, he made no complaint. Stokes made



mention of hearing moaning and groaning in the admission area. It probably was Stonner, he said, but not necessarily so. He also said that he heard a sound "like someone being bounced against the wall". This latter is somewhat corroborated by one of the officers from Guelph and by Robert Nuttall, who was then a C.O. 2 at the Toronto Jail.

PETER MICHAEL LEADER. According to Mr. Whitehead this transferred inmate was a leader in fact as well as in name. Leader alleged that when he did not reply to a question because he "did not know what he [the correctional officer] meant . . . I just looked at him". He was "smacked" a couple of times in the face, causing his nose to bleed. He said he then went to the ground and covered himself up because he felt he was "going to get a beating". While down, he alleged, he was kicked in the sides, ribs, and arms. He was then taken to segregation.

According to Leader's Misconduct Report, he refused to give his name, "threatened to attack the officers", and took a "swing" at C.O. 2 Clem Harrison. Mr. Whitehead penned the following comment on Leader's statement: "Admits [misconduct] – says he reacted this way as he did not get a fair deal at Guelph."

Leader said that he told the doctor that his nose was sore, but made no complaint to him or to the Superintendent about any ill-treatment by the correctional officers. Further, although he wrote to the Ministry of Correctional Services about a transfer, he made no complaint about having been assaulted.

Leader said that while in the admissions area he heard "a couple of guys getting smacked, like, like loud slaps".

MICHAEL KENNETH LAROQUE. This inmate alleged that shortly after entering the Toronto Jail one of the senior officers, whom he was unable to identify, said, "We are not going to have any [deletion] like you guys raised down there [Guelph], is that correct?"

Laroque alleged that he and other inmates were subjected to "a whole bunch of jabbing and kicking". This was shortly after they had entered the Toronto Jail and before they were unhandcuffed. In his segregation cell, the same senior officer – a "captain" – punched him in the stomach and said, "This will teach you we are not having any [deletion] you guys raised down below, is that understood?" Laroque said he nodded his head and the correctional officer left.

Laroque's Misconduct Report was similar to the others. He admitted misconduct and was "upset" about the way he was handled at Guelph.

WILLIAM FRANCIS GINGRAS. He was the last inmate witness to be called. He alleged that, while being questioned, he was twice hit on the head with a fist by a senior officer and told to "speak louder unless you want to be a couple of inches shorter than you are now". Gingras was 5'2" in height. He said that later he was punched in the stomach, went backwards and was saved from falling by a wall. He said he suffered no bruises and made no complaint when examined by the jail doctor "a day or two later".

## CORRECTIONAL OFFICERS (TORONTO)

The evidence of the correctional officers consisted for the most part of a recounting of the truculence and non co-operation of the transferred inmates and a denial of any assault upon them. Some of the officers admitted that force was used to make the inmates strip and be searched but said that the force used was only what was necessary.

ROBERT NUTTALL (later a C.O. 5) was a C.O. 2 employed in the search area at the time.

He said the inmates, on admission, were noisy, unruly, and unco-operative, and were using profanity. He denied that he saw any inmate struck, or that he personally struck any inmate. Although he had no recollection of doing so, he admitted that he could have "tapped" Gingras on the top of the head to get his co-operation. He agreed with counsel's suggestion that, if he did so, it was "a touch to urge him on, as opposed to a blow".

Nuttall confirmed that he heard loud noises and that "smacks would be consistent with the things that were happening in that area at that time".

BRUCE MCCLAY. It was this former line correctional officer who brought the Blue Goose incident to the attention of the Commission. He had stated that while he was questioning Stonner, Stonner used profanity towards him and indicated that he was not interested in his questioning. McClay alleged that while this was going on, C.O. 2 Willi Ernst Seidel had an inmate on the ground and was punching him, while another unidentified officer was kicking the same inmate. When this activity stopped, McClay said Seidel had a handful of hair in his hand. McClay related that he then told Stonner that if he did not co-operate he would send him to Seidel. After a time Stonner co-operated.

McClay was questioned about having signed his name as a witness to several Misconduct Reports that night. He acknowledged that he had done so and that the misconducts to which he had attested were correctly reported. He further stated that it appeared that there was a concerted plan of disobedience by the inmates transferred from Guelph.

WILLI ERNST SEIDEL. C.O. 2 Seidel could not recall applying force to any inmate that night, and particularly denied the hair-pulling allegation of McClay.

Indeed, Stonner, who was supposed to have been nearby, said he did not see an inmate punched or have his hair pulled. Nor did any of the inmates complain of hair being pulled out, as related by McClay. This is rather strange, as McClay did not give the impression of one who would purposely dream up an incident. However, there was considerable confusion that night. Even honest witnesses can be mistaken, and when it is borne in mind that the event occurred three and a half years earlier, there could have been some unintentional errors in evidence. It may be that an inmate was "pulled up by the hair" from the floor, without losing "a handful".



## CORRECTIONAL OFFICERS (GUELPH)

As for the Guelph correctional officers, three of them gave evidence that tended to support the inmates' contention that force was used by the Toronto Jail staff.

WILLIAM CHARLES DICK was a C.O. 3 at the time of giving evidence. The transcript reveals the following evidence.

A. The inmates were a little slow moving, reluctant, and they were pushed from behind with the flat of the hand or a closed fist.

MR. BYNOE. By whom?

A. By the officers from the Don Jail.

JOHN EDWARD WEBSTER, a C.O. 2, was on escort duty. He joined the Ministry of Correctional Services in 1958 and while so employed obtained a B.A. at the University of Guelph. A year later, at 46, he left Correctional Services to work in a home for mentally retarded and handicapped children, as an instructor in carpentry. His reason for leaving Guelph was that when a rotation system was adopted he decided that his effectiveness was "impeded".

"The key . . . with the correctional process is consistency. It doesn't sound very glamorous to be in one spot for a long time, but you get to know your inmates and they get to know you." He said that, under rotation, "you are not in any one place long enough to get to know anybody, and, in reverse, they don't get to know you. . . . There was little rapport after rotation . . . there had been a much larger rapport before rotation."

In answer to a question as to how he perceived his duties, he said, "Apart from custody, to attempt to bring any or all individuals into the frame of mind where they were essentially law-abiding rather than law-breaking."

I was impressed with how he gave his evidence, as well as with his attitude towards the correctional system. One little exchange had to do with the strength of his voice.

MR. BYNOE. Would you remember to keep your voice up? You tail off and the last word is very difficult to hear, and I am only a couple of feet from you.

A. I am sorry.

Q. You are a big man, and I think you can speak a little louder than that.

A. I can, but I don't.

Webster said he was not aware of any reluctance on the part of the inmates to answer questions. This was against the weight of evidence. I find that at some time, possibly not in Webster's presence, the transferred inmates did not co-operate reasonably in giving the required information.

Webster said that at no time did he go into the search area. He did not see any force applied to an inmate but he did hear "unusual sounds". He described the sound as "flesh hitting flesh or flesh being hit", and said it was a sound he had heard "a number of times before in fights". He said the

sound, which he heard two or three times, was "very sharp". He attempted to duplicate it by hitting his fist against his other hand.

Webster admitted that he had no way of knowing whether it was a correctional officer or an inmate that was being assaulted. Since the evidence was that the assaults on the correctional staff were "unsuccessful attempts" whereas the contacts by staff on inmates were admittedly successful (even if no more force than was necessary was used), I find that what Webster heard confirmed that it was the inmate and not the correctional officer that was the recipient.

Webster said he did not investigate the sounds as it was not his duty to do so. "It was not our centre . . . not our bailiwick . . . there were a number of other correctional officers there . . . Don Jail employees." Later he added, "I had no authority in the jail. No request for help was forthcoming. So you just sit and mind your own business."

When asked if he was surprised by the sounds he heard, Webster answered, "Yes and no. Being a man who doesn't use any more force than is necessary, I was surprised, and no, that I had heard by the grapevine the reputation of some Don Jail employees."

Q. What reputation was that you had heard?

A. Not good; tough.

This reputation, he said, he had heard from inmates over a period of eight or 10 years. During the course of inquiring into other allegations, evidence had been given by other witnesses as to the Toronto Jail's reputation among inmates as being a strict or tough jail. In certain respects such reputation might be to the advantage of prison authorities and help them in maintaining discipline. But rumour and fact are sometimes a great distance apart and toughness and brutality are not necessarily one and the same. In order, therefore, to test both the meaning and validity of this reputation, it was necessary to examine each of the cases in which allegations of excessive use of force were made.

ANDREW CAMPBELL KIRK. He had retired in 1972 at the age of 65, with the rank of C.O. 4, having been in the service for 21 years. At the time of the transfer incident he held the acting rank of lieutenant (C.O. 5).

Kirk related hearing one of the Toronto Jail correctional officers telling one of the transferred inmates, "You are not in Guelph now. Say 'sir' when you are spoken to." Kirk then saw the inmate "given two short jabs to the ribs, one on each side". He described them as "pulled punches". They were administered by the same officer who had spoken and were "minor" in degree of force.

Kirk commented on Gingras' allegation. "I don't know just what had happened previous, whether Gingras said anything to the officer or anything, but all of a sudden he was given two thumps on the head." Kirk described it by gesture as being a fist brought down on Gingras' head. The blows had no particular effect on Gingras since "not too much force" was used.

Kirk had also heard from inmates that it was "tougher to be in the

Toronto Jail than in Guelph". But he indicated this may have referred to the fact that "they don't get the sports, or recreation, or movies and all the rest that they get at Guelph".

## BLUE GOOSE SUMMARY

The Blue Goose incident occupied 11 full volumes of transcribed evidence and most of a twelfth, in addition to parts of three other volumes. The allegations were fully explored and the question remained, after all the evidence, whether there was an efficient clipping of the wings of the Blue Goose. Conclusions were reached and findings were made, but, more importantly, it is hoped that lessons were learned. The following is a summary of facts, findings, and recommendations. Because of the large amount of material that has been condensed, this summary is presented numerically for what, it is hoped, will be greater clarity.

1. The 10 inmates who were transferred from Guelph to Toronto had posed behavioural problems at the Guelph Reformatory.
2. For this reason, and because of the numbers to be transferred and the projected time of arrival (after the normal processing hours), additional staff was assigned to the admissions and shower area from other parts of the jail.
3. The result was a show of force, in numbers at least, to cope with the incoming inmates.
4. The inmates having a reputation as troublemakers, the possibility of encountering some trouble with them, as a result of their involuntary transfer, was anticipated and no doubt communicated to the staff at the Toronto Jail.
5. As for the inmates, their evidence and the Misconduct Reports completed after the event indicated that they were disturbed by the fact of their transfer from Guelph, its suddenness, and the lack of advice as to their destination.
6. Although there was some suggestion that the inmates should have been warned and prepared for the transfer, security reasons ruled out the giving of such advance information even at the risk of "upsetting" the inmates.
7. The atmosphere was, therefore, ripe for a confrontation between staff and inmates.
8. The inmates sparked the fuse by not co-operating, not complying promptly with orders, being reluctant to answer questions, or answering in a slow and otherwise aggravating manner.

9. It would appear that the correctional staff reacted in a physical way, beyond what was necessary to defend themselves or control aggressive behaviour.
10. The Toronto Jail officers probably considered that their use of some force would either frighten or coerce the incoming inmates into complying with orders issued to them or questions asked of them. I do not consider that there was any hesitation in impressing upon the newcomers that the Toronto Jail was a "tough" place, with strict discipline, and that its correctional staff would not tolerate any nonsense. It was probably thought that there would then be less trouble with these inmates in the future than if they were treated in a less firm manner.
11. I do not consider that the inmates were unjustly charged and placed in segregation. Although they gave various reasons for pleading guilty to the misconducts charged, there is no doubt in my mind that those charged fully realized that they were breaking the rules.
12. Having in mind the discipline factor with reference to other inmates in the Toronto Jail, as well as to the transferred inmates, I am of the opinion that the penalties imposed by the Superintendent were reasonable in the circumstances.
13. I find that some of these allegations are valid, even if the injuries sustained were not as serious as alleged.
14. In view of the time elapsed since the occurrence, the number of inmates involved, the large number of correctional officers present, the lack of identification in most of the alleged assaults, and the confusion that existed at the time, no useful purpose could now be served in attempting to place blame on any specific individuals.
15. Even some of the so-called minor assaults or indignities, such as the "banging" of Gingras twice on the head, cannot be justified. The proper course of action was to place on charge, and in segregation until hearing, inmates who disobeyed rules or orders. There should not have been any additional use of unnecessary force.
16. As for the allegations that the staff at the Toronto Jail demanded to be addressed as "sir", this is a policy matter which should be at the discretion of the Superintendent and consistently applied throughout the jail. Some of the correctional officers questioned, such as Nuttall and Williams, indicated they did not require such a style of address. I received the impression that other staff members were of a contrary opinion. It is important that after the Superintendent makes his decision on such a matter there should be consistency throughout the jail. The inmates should not be subjected to the whim of a particular officer.
17. Some of the inmates indicated that they did not complain of mistreatment because of a fear of reprisal or even a belief that nothing would be done. This was mentioned elsewhere in the hearings in connection with other incidents. This, if valid, is a cause for concern. Even the expression of such



an opinion is unhealthy. It is hoped that the proposed Toronto Jail Council would provide a ready course of action for a complaining inmate. Further, increasing the number of senior officers should give better control, better surveillance, and also an additional means of lodging a complaint about any alleged wrongdoing by line officers. Pamphlets issued to incoming inmates should set out their rights and the complaint procedure. In order not to have officers exposed to unjustifiable complaints and thus impair their efficiency, false reporting of complaints should be a jail offence and this fact should be brought to the attention of inmates in the same manner and at the same time that they are advised of their rights.

18. During the hearing of the Blue Goose incident, mention was made of an inmates' committee at Guelph. The matter of having such a committee at the Toronto Jail was considered at various times during the hearings. Such a committee might well serve a useful purpose in an institution with a more static population, but at the Toronto Jail the average stay is only 10 days and this would make it unworkable at the Toronto Jail. Conceivably, more harm than good would result. It might enable some heavier, "wheeler-dealer" inmates to exert undue influence on more moderate, short-term inmates. Inmate rapport with line officers and senior staff should be encouraged, and not just in a "lip service" manner. This would help to provide the type of information that would come from an inmate committee. If there were, over and above this, the superintendent group and the proposed Toronto Jail Council, the result would, it is hoped, be a continuous awareness of the morale of the inmate population, a signalling of trouble spots and danger signs, and a conscientious effort to treat the inmate as a human being and to comply with the reasonable requests or needs of the inmate population.
19. The matter of shift work, brought out by a former Guelph correctional officer, will be considered elsewhere, as will other matters peripherally raised in the Blue Goose incident, such as staff ratios, exercise facilities, prisoner amenities, segregation, etc.
20. As for the allegation of Nossey that after being placed in segregation he was visited by officers and struck in the face, comment has been made elsewhere about the exceedingly serious nature of such allegations (Torrance re inmate Pearce's allegation). In the absence of any confirmatory evidence, direct or indirect, and in the light of all of Nossey's evidence, I do not make an adverse finding against the correctional staff on this serious charge.
21. On the matter of behavioural or disciplinary transfers generally, I recommend that wherever possible these be made direct from the originating institution to the designated institution without imposing added administrative duties and other staff problems on the Toronto Jail by using it as a stopping-off place.
22. It is further recommended that the transfers be in as small numbers as possible and that transfers of as many as 10 behaviour problems at one



time be avoided. If it is impractical to avoid such a mass transfer, the least that should be done is to process inmates through admissions one or two at a time and hold the remainder in the van, or in some other secure place apart, such as a nearby police station lock-up. In this way the tendency of some inmates to put on a show of defiance in front of their mates would be less likely.

23. The dispatching of documents with escorting officers and the computerizing of records, both of which were said to be under way, should reduce the necessity for repetitive questioning of inmates on transfer.

## The O'Hanley-Somers-Flynn Allegations

*"I flat out say I would never do such a thing as that, sir, no way."  
(C.O. 5 Robert Nuttall)*

*"... they are young and they are very active. They have a lot of pent-up energy. If they could be given something to do, something to keep them occupied, we wouldn't have the problem." (C.O. 4 Robert Nuttall)*

*Flynn, in his evidence, indicated that he felt he deserved "a couple of shots". He did not make "any more bombs after that".*

Michael James O'Hanley, an ex-inmate of the Toronto Jail, gave evidence before the Commission in connection with the James Frost and Nathan Somerton incidents. He advised that he also had a complaint of his own to make with reference to an occurrence on April 30, 1974. Two other inmates, Keith Edward Somers and Kenneth Francis Flynn, were also involved.

At the time the three former inmates gave evidence on June 9, 1975, O'Hanley was 18. He said he had been in difficulty with the law since he was 16. On April 30, 1974 he was an inmate of Corridor 3, where young persons were housed. There was some "horsing around" in the corridor, as a result of which the corridor officer called C.O. 4 Robert Nuttall – or Nuttall may have been walking by. At any rate, O'Hanley alleged that Nuttall called him out of the corridor, along with Somers. "So he came and picked us out because we were the biggest ones."

The fooling about involved the manufacturing of "home-made fire-crackers" by O'Hanley and Flynn out of match sticks, a lead pencil, and some tin foil. There was also mention of a complaint by another inmate of theft of some cigarettes, although there was no evidence that any of the three inmates mentioned was responsible for this. Somers admitted threatening another inmate. There was also evidence of a fire alarm being sounded and of the odour of a burning fabric being smelled.

In all, there was justification for the correctional staff to be concerned about what was happening in Corridor 3 that day, since it affected the safety and welfare of other young inmates.

O'Hanley alleged that Nuttall took Somers and him into a nearby broom closet and hit them both. O'Hanley said that he was punched in the stomach twice and backhanded in the face once. He thought Somers was struck in the stomach "once or twice. . . . I do not remember what happened, it's a long time ago." He further stated that Nuttall warned them that if they continued their misbehaviour he would throw them "into the hole" and hit them again.

Somers, 19 at the time of giving evidence, alleged that Nuttall slapped him across the mouth with the "back of an open hand" and that O'Hanley was similarly slapped and also punched in the stomach by Nuttall. He indicated that these assaults followed their denials of any wrongdoing in the corridor.

Kenneth Francis Flynn was 17 at the time of giving evidence. He had failed Grade IX after two years in that grade. He then went to work and later attended at a Community College on a Canada Manpower assigned course. He alleged that after O'Hanley came out of the broom closet he (Flynn) was taken into it. He was told to "stand at attention" with his hands behind his back. When he shrugged his shoulders on being asked what he was doing, and whether he was being smart, he said, he was punched in the stomach and then told to return to the corridor. No charge was laid against him.

It appears that O'Hanley and Somers were also returned to the corridor without being charged and that their alleged stay in the closet was also of short duration, "a couple of minutes".

No complaint was made by any of the three inmates at the time of these occurrences. The incident was not a serious one in terms of the severity of the assault. I accept that it occurred, and substantially in the way related by these three former inmates.

O'Hanley and Somers identified Nuttall as the person who had struck them. Flynn was shown photographs of correctional officers, including Nuttall. Like the other two, he had an opportunity to see Nuttall in the hearing room, but did not identify Nuttall as the one who had assaulted him.

There is no doubt from the evidence that the same correctional officer was involved with all three inmates. He may have been of senior rank. In fact, Flynn even described him as wearing a suit of a Glen check and also wearing glasses. Nuttall would not be wearing street clothes while on duty. There is no doubt that Nuttall would have been wearing a green blazer, with grey flannel trousers and a white shirt. Was Flynn in error in his description, or

were O'Hanley and Somers in error in their identification of Nuttall?

At no time during the hearings did Nuttall wear glasses save, at times, for reading. He said that this was also the case while he was on duty at the jail.

Nuttall said emphatically that he did not recall the incident. He further said that, as a senior officer, he had various places where he could "sit down in comfort and cleanliness and speak to an inmate" without having to use a broom closet, and that he had never used a broom closet for such or any other disciplinary purposes.

I was impressed with his statement to Mr. McRae: "I flat out say I would never do such a thing as that, sir, no way. . . . I am a 41-year-old man, and those are two healthy young men. I would be putting myself in a very precarious position to go behind a closed door, out of sight of a covering officer, with two inmates."

If all three inmates had identified Nuttall, the case against him would have been stronger. There was frequent misidentification and confusion of correctional officers during the hearings. This incident was of short duration, was not severe as to injury, and it had occurred over a year earlier. The inmates involved were teenagers. As stated, I accept that the incident occurred. But even though both O'Hanley and Somers identified Nuttall, I am not wholly convinced in the light of all the evidence of O'Hanley, Somers, Flynn, and Nuttall that Nuttall was the officer who took them into the broom closet.

This type of punishment, without the laying of a charge, might have the desired effect of improving the conduct of young inmates and it might even be considered less severe than segregation. Unfortunately, however, it permits of no independent hearing and leaves no record for review. It is also contrary to the Ministry directives, for it is an assault on an inmate without any justification of self-defence. It is against the dignity of the inmate and can lead to more serious abuse if it is not unequivocally disapproved. This Commission, therefore, condemns such practice, and recommends that sufficient instruction, control, and discipline of staff be instituted to ensure its permanent discontinuance.

As for the correctional officer responsible, whoever he was, he may well have acted with less caution for his own safety than was mentioned by Nuttall. He may have felt that he was a match for two young inmates, who may have been frightened or unsure of themselves, or who may have considered that the punishment was justified, and at least better than segregation.

Flynn, in his evidence, indicated that he felt he deserved "a couple of shots". He did not make "any more bombs after that".

Possibly the seriousness of any attack on a correctional officer was realized by both the inmates and the officer, or at least the officer was relying on this. It may be that an experienced correctional officer, acting swiftly, also has the advantage of surprise. Was there also a reliance on the "code of the jail" that there would be no complaint and that even if there was a complaint the action of the officer would be within acceptable limits? If either of these last two was the reason for two young inmates being assaulted in each other's presence, the atmosphere of the Toronto Jail at that time was not a healthy one.

Finally, I wish to quote from the transcript on one of the problems illustrated by this incident.

THE COMMISSIONER. We have heard evidence earlier in connection with some of the problems posed by these younger inmates. Do they require a higher ratio of correctional officers. . . . Apparently a situation, as was related here, indicates that they were getting into some kind of mischief.

ROBERT NUTTALL. Yes, sir.

Q. Do you think there is any way that this could be reduced, the tendency to mischief on the part of younger inmates?

A. Well, sir, they are young and they are very active. They have a lot of pent-up energy. If they could be given something to do, something to keep them occupied, we wouldn't have the problem. Unfortunately the officers – we have two officers who run the two corridors. If we take a group of the boys, as we call them, out on a work detail or something like that, that calls for one officer being pulled away, so that leaves only one officer running the two corridors. So a staffing situation problem arises there. But if you keep them more occupied it would let some of the steam off and they would have less time to be playing pranks on each other, et cetera.

Q. This is exactly what I had in mind by my question – if it doesn't require a higher ratio of correctional officers to look after these young inmates than to look after an older and more regimented inmate?

A. It takes the same amount of officers provided you keep them in the corridors, sir. But if you take them out of the corridor for some type of activity to keep them occupied, well then, you need another officer, sir.

Q. Apparently they should be kept occupied to keep them out of mischief.

A. I would agree with that, sir.

## O'HANLEY-SOMERS-FLYNN SUMMARY

I accept that the three inmates, O'Hanley, Somers, and Flynn, were assaulted as alleged. Their conduct called for some disciplinary action, but the use of force, not being in self-defence or to prevent an immediate attack, was unjustified. The responsible correctional officer has not been satisfactorily identified in this case.



## The Meagher Allegation

*"[Meagher was] very upset when he came into the room . . . he was very concerned about his physical condition at that time and he did say to me, 'I shouldn't show you this, but I have to.' At that point he raised his shirt and I saw the bruises." (Sister Elizabeth Robinson)*

John Arthur Meagher, an inmate, gave evidence with reference to the Frost incident. That evidence was not very reliable. Meagher indicated at the time that he had a complaint to make about his own treatment at the Toronto Jail, in October 1973, and he was recalled in this connection at a later date. Altogether, some 20 witnesses were heard on Meagher's allegation which, not being one of the allegations made by Gary Dassy or Jane Mannerholm, will be summarized briefly.

Meagher's complaint was that he was taken before C.O. 5 Stanley Johnson and accused of sexual misconduct with a young male prisoner. Homosexuality is a problem in the Toronto Jail as it is in other institutions where virile males are confined. One of the duties of the correctional staff is to protect inmates in their custody. When younger inmates are subjected to homosexual acts, this is a matter of serious concern. Aside from the necessary protection of the victim, there may also be a strong reaction against the person committing the assault, by staff members as well as by other inmates. This may result in corridor disturbances or further assaults by inmate upon inmate.

Meagher denied knowledge of what had been going on in the corridor.

Johnson is alleged then to have ordered C.O. 2 Donald George Potter to take Meagher to the segregation cells in the old building, to help him "remember". Johnson said that there were two reasons for this action of his. One was that the segregation cells in the new building were filled. The other, in Johnson's words, was that he "thought it was fitting to get him out of the corridor and try to obtain further information of what happened. . . . I was taking into consideration that it's not the most comfortable place."

The old segregation cells were mockingly referred to at various times in the hearing as "Garrett's Hotel". Garrett was a senior correctional officer at the jail. After the new segregation cells were constructed the old ones were seldom used for any purpose other than storage. If they were not officially condemned, they should have been.

Meagher refused to enter. He used profane language towards the correctional officers and attempted to strike or did strike Potter and another escorting officer, C.O. 2 Robert Fulton Driscoll. At his misconduct hearing, Meagher admitted using profane language. He was also found guilty of assault or attempted assault and sentenced to 10 days in segregation. Nine of these days he served in the new segregation cells. But on the first day he was, according to the jail records, in the old cells from 2:12 p.m. to 9:41 p.m. He was transferred temporarily to 3 annex before his later transfer to the segregation area in the new building. Meagher estimated the time as being longer, but the record showed that he was in the old segregation area approximately seven and a half hours, during which time, he said, he had no bed or toilet facilities, and was without clothes. "I was in there bare-naked. I was freezing to death . . . windows were open there . . . it would be approximately 32°F or lower."

The correctional officers said Meagher wore his jail clothes at all times. Even if he did, it is my opinion that the old cells were not fit for use. If it was necessary to segregate Meagher, as the evidence would indicate, then an inmate should have been transferred out of the new segregation cells or Meagher should have been sent to 3 annex earlier. I have no doubt whatsoever that he was deliberately placed in the old segregation cells "to make him talk". If he was there without any segregation garment or other clothing, so much the worse and the more inexcusable.

After a misconduct hearing by the Superintendent or his deputy, segregation may, of course, be imposed. It should not be used coercively prior to the misconduct hearing in order to attempt to exact a confession. This is not to say that an inmate cannot reasonably be segregated pending his hearing. Such hearing should, of course, be held as expeditiously as possible, and in the meantime the inmate should not be harassed or subjected to more than the usual segregation punishment. He should only be questioned, in a proper and acceptable manner, if there is an ongoing investigation that must be conducted prior to his misconduct hearing. This would be an investigation where others are involved. If the misconduct, however, is such that it only involves the segregated inmate, or if statements have already been obtained or are being obtained from other inmates, then the segregated inmate's questioning can await the Superintendent's misconduct hearing.

Although the evidence does indicate some suspicion, Meagher was not

charged with an assault upon a fellow inmate. As for the misconduct charge of "attack or threaten to attack" a correctional officer, there is a noticeable doubt as to where and when this occurred. It could well have occurred as Meagher was resisting attempts to place him into the old segregation cells. Although such an attack would not be justified, if it occurred while he was being placed in an improper area this should be an element to be considered in the investigation of his punishment.

Indeed, one of Meagher's complaints was that he was assaulted while being placed in the old segregation cells. He alleged that Potter grabbed him in a headlock and threw him over his shoulder, punched him in the kidneys "with a fairly good degree of force" and kicked him as well. He said that the punching and kicking continued until a number of other correctional officers arrived, and they then joined in, kicking him in various parts of his body. Meagher identified six additional correctional officers. Subsequent evidence confirmed that some who were identified by Meagher were not on duty at the time.

One correctional officer, who, Meagher claimed, kicked him, was C.O. 2 Leon Harry Chelminski, who he said told him at the time, "This is what happens to diddlers." Chelminski denied both the assault and the statement. In fact Chelminski said that he did not even know the meaning of "diddler". I find this latter somewhat difficult to accept, as the term appeared to be well known to other correctional officers and inmates.

Potter denied punching or kicking Meagher or throwing him over his shoulder. This was supported by Chelminski, who said there was only a minimum use of force. But both Chelminski and Potter admitted to Potter having Meagher in a headlock.

It may have been a result of Meagher's resistance to being put into the old segregation cells, it may have been a result of his "attack or threaten to attack" correctional staff, or it may have been an added dollop thrown in because of the nature of the offence for which Meagher was taken to segregation. Whatever the reason, I am satisfied that Meagher was struck with some degree of force by one or more correctional officers. This is strongly supported by the evidence of a most reliable witness, Sister Elizabeth Robinson.

Sister Elizabeth graduated from the Convent of the Sisters of St. Joseph in 1961. She taught for six years, and at a later date she obtained a B.A. degree. Her first contact with the Toronto Jail was in 1973, and later she worked more actively at the jail. At the end of 1975 she attended before the Commission at informal discussions, along with other witnesses, and assisted with evidence concerning the social services at the Toronto Jail. I found her to be a most concerned, dedicated, and soft-spoken person, yet not impractical in her approach to prison matters. If there were more people such as Sister Elizabeth in our society, I am sure there would be fewer problems with our jails and prisons.

Sister Elizabeth said she spoke to Meagher in one of the professional interview rooms outside 2B segregation. He was "very upset when he came into the room . . . he was very concerned about his physical condition at that time and he did say to me, 'I shouldn't show you this, but I have to.' At that point he raised his shirt and I saw the bruises." She then mentioned

bruises to Meagher's back around the kidney area, on his side, and on his legs. "He implied that they had been produced by blows from guards."

Meagher made other allegations of lesser assaults about the same time. Not only were these unsubstantiated but some were open to other explanation, or inconsistent, or against reasonable probability.

Finally, he complained that although he asked to see a doctor on five consecutive days while in segregation, he did not see one until his release. The matter of medical attention for inmates in segregation was discussed during the hearings and procedural changes in this matter were made. The very nature of segregation, particularly when it involves hyperactive or disturbed persons, dictates that, in addition to a doctor checking inmates before and after segregation, they should be checked by a doctor daily while in segregation to ensure that they are able to cope with segregation and are not physically or mentally injured thereby. If the effects are adverse to the extent of being harmful to the inmate, some other means of punishment should be substituted. This might be loss of statutory remission or confinement to the psychiatric facility in the jail. The doctor will, of course, have to be expert enough to distinguish between those shamming and those truly affected by segregation confinement.

## MEAGHER SUMMARY

I find that Meagher was, for a seven and one-half hour period, improperly placed in one of the old segregation cells. Johnson, as the senior officer who issued the order, must bear the responsibility for this.

As for the allegation of assault, I accept the corroborative evidence of Sister Elizabeth that there were visible signs of injury on Meagher's person. I am of the opinion that these were inflicted upon him by the correctional officers. On the evidence, the most likely ones to have taken this action were Potter and Chelminski. The more difficult question to answer is whether such force exceeded that which was necessary. Mr. Carter, in his submissions on Meagher's various allegations, contended that he was not a credible witness. On many matters which Meagher related, I accept this observation. I do find, however, with reference to the October 1973 episode, on the balance of probabilities, as I read the evidence and as I saw the witnesses, that more force than was necessary was used against Meagher.

It is most probably wholly unrelated to the above, but it should be noted, from the standpoint of the Toronto Jail, that neither Potter nor Chelminski is any longer on staff.





## “Write-in” Allegations Heard Orally

As explained in the chapter entitled “The Allegations”, the complaints of four former inmates who had written to the Commission in response to our open invitation were selected by lot for oral presentation. The names drawn were those of Pirozzi, Diano, Vetere, and Copeland, whose allegations are considered in this section, along with that of Gould, whose case was closely connected with that of Pirozzi. The remaining “write-in” allegations are reviewed in the section immediately following this one.



## The Pirozzi and Gould Allegations

*"One of the two most violent people I have ever met." (Former Superintendent Gerald Whitehead, referring to Patrick Pirozzi)*

*"He is one guy you would remember. You would never forget that guy. . . . At times he wasn't very polite to us and at other times he was all right . . . personally, I like to talk with them. I always like to handle them in my own way and, like, to try to figure out what makes them tick."*  
(C.O. 2 Herbert Hogg, referring to Patrick Pirozzi and inmates generally)

*"I thought that I've got to get down there and render him helpless because as long as he can move I'm in trouble." (Patrick Pirozzi, referring to his alleged attack on another inmate at Kingston)*

*"You go from county bucket to county bucket. . . . That way you cannot get to know anybody and instigate trouble." (Ray Gould, referring to what has been described as the "ghost train")*

Patrick Jerome Pirozzi was one of the "angry young men" who appeared before the Commission. His allegations came before us by way of the "write-ins". Four of these were chosen by lot to be heard orally. Ray Keith Gould was an inmate who gave evidence about one of Pirozzi's allegations. He also advanced a claim of his own. The three other main "write-in" allegations that were heard, *viva voce*, involved inmates Diano, Vetere, and Cope-

land. Pirozzi's police record was that of a man of 24 who had, on four separate occasions, been charged with assaulting peace officers, including correctional staff. There were also some references to assaults on other inmates.

He may have possessed a dual personality. He had indicated a liking for painting pictures, which he was able to do at another jail, and yet the former Superintendent of the Toronto Jail, Gerald Whitehead, described him as one of the two most dangerous men he had ever encountered.

Pirozzi made four separate charges of mistreatment. Thirty-three witnesses were heard with reference to his allegations and the incidents are reported in seven volumes of transcribed evidence.

## FIRST PIROZZI ALLEGATION

On November 30, 1971, Pirozzi had assaulted a correctional officer at the Toronto Jail, for which he was convicted in court on December 6, 1971.

Pirozzi alleged that, on his return to the Toronto Jail from court, C.O. 2 Albert Victor Reynolds swore at him and told him he would not get away with assault without retaliation. Pirozzi claimed that Reynolds attacked him and booted him four or five times and that eight or nine other correctional officers joined in. He also said that he was punched, grabbed, and twisted, and claimed various assaults to his head and body which assaults he said lasted 12 to 13 minutes.

Pirozzi said he was then taken to segregation where he spent 15 days. He stated that he did not complain to the doctor about the alleged beating because of fear of reprisal by the correctional officers.

A number of correctional officers who might have been in the area at the alleged time were called. There was a general denial by all, including Reynolds who was specifically identified by Pirozzi. The first medical report (December 7, 1971, the day after the alleged assault) indicated no complaints and an "O.K." physical examination. A further note on Pirozzi's medical report on December 17 indicated, "Inmate asked doctor what would happen if [he] struck one of these [deletion] guards." The doctor's answer was not recorded.

I agree with Mr. Carter's submission that if Pirozzi had been assaulted for the length of time he alleged (12 or 13 minutes) and in the manner he alleged, there would have been more severe signs of injury.

Further, on the matter of credibility, Pirozzi's allegation that he was kept in segregation for 15 days on that occasion was contradicted by the log records of both 2B segregation area and Corridor 2C (to which he was later transferred). These records showed that he was in segregation from 1:00 p.m. on December 6 to 9:30 a.m. on December 7.

I therefore find no evidence to corroborate Pirozzi's first allegation.

## SECOND PIROZZI ALLEGATION

The second incident occurred on January 25, 1972. Pirozzi had been transferred to the Toronto Jail from Lindsay. He said that while he was in the search area C.O. 4 Robert Nuttall asked him to sign his "personal belongings sheet". He refused, arguing that all his belongings had not been transferred. He alleged that Nuttall then punched him in the stomach and that eight or nine other correctional officers, including the Assistant Superintendent, Colin James Dunbar, joined in. He said that he was kicked nine times and that four of these kicks were by Reynolds, whom he had named in his first allegation. He complained that he was punched at least 14 times and that his kidneys were "stomped on and punched". He estimated that the assaults lasted eight minutes. He said he was then taken to segregation where he stayed for 15 days. The Misconduct Report, prepared by Nuttall, indicated that Pirozzi swore, disobeyed an order to strip, and struck Nuttall.

Understandably, Pirozzi was upset by the non-arrival of some of his personal belongings. It is recommended that, when an inmate is transferred from one institution to another, he sign a verifying list of his personal belongings at the first as well as at the second institution, and that his belongings and records go to the receiving institution at the time he is transferred.

Nuttall in his evidence recalled the occasion. He remembered ordering Pirozzi to sign the property declaration and Pirozzi refusing to do so. He said that, after he repeated the order, Pirozzi signed and then threw his pen on the floor and swore at him. It was Nuttall's evidence that Pirozzi was asked to strip and refused to do so, that he swore again, moved towards Nuttall with a posed fist, and started to throw a punch at the correctional officer. Nuttall said that he knew about Pirozzi's reputation for striking correctional staff. He blocked the intended blow and then "counteracted" with a blow of his own to Pirozzi's body. Things "happened quickly with blows being exchanged" until Mr. Dunbar and others came to Nuttall's assistance and "subdued" Pirozzi. Nuttall said Pirozzi's clothes were then forcibly removed, he was given "grey pyjamas" (used at that time as segregation garments), and taken to segregation.

Nuttall denied that the incident lasted eight minutes as alleged by Pirozzi. He said the inmate was subdued in 10 seconds. He further said that he was too busy watching where Pirozzi's hands were going to see whether any other correctional officer was punching him. He did not see anyone kick Pirozzi.

I consider Nuttall's recall of events good and his evidence fair, even to the point of admitting his own striking of Pirozzi. I accept his version of what occurred, wherever the evidence of the two was in conflict. Whether Nuttall's claim that he was too busy to see whether other correctional officers struck or kicked Pirozzi was a convenient way to avoid implicating fellow staff members is less certain in my mind. Nuttall indicated that the others had to "subdue" Pirozzi. Therefore some force was necessary, and justifiably used, on an aggressive and battling inmate. Knowing Pirozzi's reputation as



a "dangerous" inmate, how could the force be accurately weighed in the emergency Pirozzi had created? If, however, the officers used the incident as an excuse to "punish", and did more than just subdue, then the force used may well have been excessive.

C.O. 5 Vassos Zodiates recalled having trouble with Pirozzi on five or six occasions, and in particular he recalled his second allegation. Zodiates said Pirozzi came back from another institution as a "behaviour problem" and, knowing he was going to be segregated, he "started throwing punches and calling names to the officers".

Zodiates stated that the Toronto Jail staff had prior knowledge of Pirozzi's return. "We had quite a few officers down there because we knew what was going to happen . . . we were taking our precautions."

Zodiates' evidence in the Pirozzi matter indicated a dilemma. If an inmate who is a behavioural problem is expected in the reception area and there is trouble, there may be criticism if there are not sufficient officers on hand to control the situation. On the other hand, a show of force by a large number of correctional officers may create an atmosphere of excitement which could exacerbate a highly strung inmate or a nervous correctional officer. Again, in a situation such as this, it is important that the correctional officers be carefully selected.

If there was a special team trained in crisis situations and in the handling of difficult inmates, there would be less chance of an incident developing. The number of officers visible could then be small, with others on the alert in case they were needed. Good humour, patience, understanding, and special training could be more effective than weight of numbers where one or more difficult inmates are to be processed or dealt with in any sensitive jail situation. In this regard, the incident that prompted Pirozzi's second allegation may have been rather like the Blue Goose situation.

Zodiates indicated that force was used on Pirozzi on the occasion of the second allegation, in order to subdue him. "When he flips out . . . he is really terrible." According to Zodiates it is not necessary to punch or kick an inmate, and he said that he did not see anyone take such action against Pirozzi. If there were sufficient officers, an inmate could be immobilized by being held by different parts of his body.

The medical admission note of the day of the incident indicated a "sore low back" as the only complaint and the complete physical examination was "O.K." Eight days later there is the notation, "Sore back from push-ups. Advised to rest a few days and avoid push-ups, etc."

Since there was no complaint at the time of the misconduct hearing or at the time of either of the medical examinations that the sore back was a result of an assault by the correctional staff, and since Pirozzi gave another explanation for the low back pain on the second medical examination, it would be wrong to relate the low back pain solely to the alleged assault, to the exclusion of any other cause. That being so, there was insufficient evidence to indicate excessive use of force.

Assistant Superintendent Colin James Dunbar has been mentioned. He subsequently was Superintendent at the jail in Sault Ste. Marie and more recently was appointed Superintendent of the Metropolitan Toronto East

Detention Centre, which was opened in the Borough of Scarborough on April 25, 1977. I cannot let the opportunity pass without adding that I was most impressed with Mr. Dunbar's ability as a jail administrator and his commendable understanding of correctional services, including the needs of inmates and the problems of staff.

### THIRD PIROZZI ALLEGATION

The third incident occurred on July 21, 1972. Pirozzi said that C.O. 2 Ronald Thompson called him out of the corridor and was one of the correctional officers who subsequently escorted him to segregation. Pirozzi said that, at the time he went to the segregation cells, there were eight or nine correctional officers in the vicinity of the elevator in the new building. He alleged that he was struck by Thompson and others in the elevator. He stated that the elevator was stopped between floors, during which time he was hit with fists, arms, and elbows and also kneed and kicked. "I had never been struck so hard in all my life."

At the time of the Commission hearings, Thompson was no longer employed by the Toronto Jail but was working as a correctional officer in Nova Scotia. On medical advice, Thompson was unable to travel to the hearings. It was further stated that he was under the care of a psychiatrist. Accordingly, Commission investigators discussed the Pirozzi matter with Thompson by long distance telephone. He failed to recall the incident and added that whatever statement he had made in the Misconduct Report would be correct.

The Misconduct Report indicated that Pirozzi refused to obey an order to clean screens in the corridor, that the refusal was accompanied by obscene language, and that Pirozzi was removed by Thompson to the segregation area. The Misconduct Report related that Pirozzi "tried to crush officer into walls etc." of the elevator when "carried into elevator".

The penalty imposed, as set out in the report, was, "Indefinite close confinement not to exceed 10 days on special diet." It was explained by Mr. Whitehead that "not to exceed 10 days" referred to the special diet and not to the close confinement. In any event, Pirozzi was kept in solitary confinement from July 21 to August 29, a period of 40 days. From August 10 to the end of this period, Mr. Whitehead was on holiday and Mr. Farquhar was deputizing for him. It was said that Pirozzi's segregation was reviewed on a day-to-day basis.

C.O. 3 James B. Brown gave evidence with reference to the third allegation. He was one of the few correctional officers who candidly admitted that he had to strike inmates at times. He was in his early thirties, strong, quick, and well built. I admired the candour of witnesses such as Brown, who admitted having to use physical force on certain occasions, and preferred it to the evidence of some correctional officers who invariably denied using force even when provoked, or who hid behind the curtain of "no

recollection”.

Brown indicated that while Pirozzi was in the bull pen (opposite Corridor 8) after he had been removed from his own corridor, Pirozzi challenged the correctional officers to come and get him if they wanted to take him to segregation. He stated that Pirozzi was making gestures with his fists. The correctional officers then “rushed” Pirozzi, who fought back. According to Brown, Pirozzi was subdued within 30 seconds but trouble broke out again in the tunnel and continued while Pirozzi was going into the elevator, while he was in the elevator, and outside the segregation cell. Brown said that it was necessary to strip Pirozzi forcibly before putting him into the cell and that he was put in naked. The segregation log bears the notation that Pirozzi was violent at the time.

Brown described the struggle on the way to segregation and said it was “just the force of numbers” that overcame Pirozzi. When asked whether he struck Pirozzi, he replied, “I should imagine I would have.” He denied kicking Pirozzi.

Like Nuttall with reference to the second allegation, Brown indicated that he did not know whether Pirozzi was struck by any other officers as he was too busy “looking out” for himself. “I can’t talk for the other officers,” he said. Rarely was one able to obtain an admission from one officer that he saw another officer strike an inmate. The Bennett-Switzer incident was a notable exception.

Brown denied Pirozzi’s allegation that the elevator was stopped between floors. This allegation was made by other inmates with enough frequency during our hearings to lead to some suspicion. The evidence of Father Callahan, given in connection with another incident, and which I accept, shows that the elevator on occasion was used for purposes other than that of simply transporting inmates to segregation.

With reference to this third allegation of Pirozzi, C.O. 4 Alexander Lochhead said that he came upon Pirozzi in the basement outside the elevator. As the party was about to enter the elevator, Pirozzi “made a sudden lunge forward”. Lochhead said that he thought he was going to be sandwiched against the door and struck back with his elbow, catching Pirozzi in the head or face. Lochhead estimated that there were “at least” four or five officers, but denied that any unnecessary force was used on the struggling Pirozzi. Like Brown and C.O. 5 Hugh Nicholson, the senior officer present, Lochhead said he did not see Thompson commit the alleged assault on Pirozzi.

Lochhead, while giving evidence in the Pirozzi matter, indicated that at one time a chain with grips at each end was used on an inmate’s wrist to move him along. This practice was discontinued about 1970, he said. Lochhead was in agreement that it would be easier for staff to move inmates from one place to another if they were handcuffed.

It is recommended that the plastic handcuff illustrated in this report be carried by all senior correctional staff and be used, as and when necessary, on difficult or potentially difficult inmates who are being escorted.

As for Pirozzi’s medical documentation, the Toronto Jail admission note for July 17, four days before the third incident, mentioned “sore abdomen . . .

examination unremarkable". Two prior entries made the same month at the Guelph Correctional Centre read, "7 July 72. Admitted to N.P.C. (Neuro-Psychiatric Clinic) for assessment" and "13 July 72 unstable, unco-operative...".

The medical psychologist's report at the Guelph N.P.C., dated July 7, 1972, read, in part: "Mr. Pirozzi said that he has assaulted these officers because they have attempted to push him around and he refuses to be pushed around. He is an extremely stocky, well built individual and seems to have most definite ideas as to what he is going to do. If someone attempts to stop him or deter him from doing what he intends to do then he said he reacts aggressively. . . . It is obvious that Mr. Pirozzi is going to be a custodial problem."

The above medical notes give some indication of the added burdens and duties that are imposed on correctional staff by some difficult inmates. As has been mentioned, Pirozzi was held in segregation from July 21 to August 29, 1972. The first segregation log entry (9:00 a.m. on July 21) read, "Pirozzi admitted. *Violent*. A Lochhead." The underlining of the word "violent" was apparently made by Lochhead.

The next medical status summary note after July 17 was dated August 30. It contained reference only to an abscess and later in the same day to a "scraping on gums".

There is thus no medical documentation or recorded complaint to support Pirozzi's allegation of assault on July 21, 1972. As has been mentioned elsewhere, since the inception of this Commission there has been a change in the Toronto Jail procedure and all inmates are now medically examined on entering segregation if a doctor is available. If no doctor is on duty at the time, there is an examination by one of the nurses and a subsequent medical examination as soon as a doctor is available. Further it was indicated, and I trust that the procedure is strictly followed, that a doctor "makes rounds" of the segregation cells each day that a doctor is on duty. Had this practice been in operation in 1972 there would have been more conclusive evidence, one way or the other, as to Pirozzi's third allegation.

#### FOURTH PIROZZI ALLEGATION

This allegation was in part related to the first allegation, in that Pirozzi placed it "about four days after" the first allegation (December 6, 1971), and while he was still in segregation. The records indicated that this period of segregation lasted less than 24 hours (see first allegation), so either he was in error as to the time or he fabricated the incident.

Pirozzi stated that he had been advised that some additional property of his had arrived and he was to go to the admitting area. This he did, and while he was there, he said, an unidentified officer said to him, "You think you are a pretty tough character eh?" and then the correctional officer struck



him in the face.

Since Pirozzi was unable to identify the correctional officer who allegedly assaulted him, this claim, even if in error only as to date, could not reasonably be investigated further.

## PIROZZI SUMMARY AND GENERAL COMMENT

Many correctional officers were called with reference to Pirozzi's allegations and their evidence constituted a repeated denial of having seen or personally applied excessive force to Pirozzi. Some, such as Mr. Dunbar, were not on duty at the relevant times mentioned by Pirozzi. Others had no recollection, relying on the statement that had there been an incident such as the one described by Pirozzi they would have recalled it. Still others recalled some incident or other with Pirozzi, but averred that any force used on Pirozzi was necessary and justified under the circumstances and was not excessive.

C.O. 2 Herbert Hogg said, "He is one guy you would remember. You would never forget that guy. . . . At times he wasn't very polite to us and at other times he was all right." Nevertheless, Hogg claimed that he got along well with Pirozzi and most other prisoners; ". . . personally, I like to talk with them. I always like to handle them in my own way and like to try to figure out what makes them tick."

Mr. Whitehead stated that at no time in any of the misconduct hearings he had with Pirozzi was there any allegation of an assault by correctional staff. As mentioned earlier, he described Pirozzi as "one of the two most violent people I have ever met". Whether it was justifiable to keep Pirozzi in solitary confinement for 40 days is questionable. In any event, it "solved" the Pirozzi problem for the Toronto Jail for more than a month. But, as later proven, this was nothing more than a "band-aid" solution.

According to media information provided later by Mr. Whitehead, who moved on from the post of Superintendent at the Toronto Jail to become Assistant Regional Administrator, Adult Programmes, Eastern Division (based at Kingston), Pirozzi was charged early in 1976 with assault on another inmate. At the time, he was serving a sentence at Kingston for parole violation and the assault of a policeman. His trial was by jury and he was found guilty. Evidence indicated that his victim, some four months after the event, still remained in a "somewhat vegetated" state. A correctional officer testified that he had seen Pirozzi shove the other inmate down a flight of stairs before "smashing him over the head with a cup and repeatedly kicking him in the head". Pirozzi alleged that the other inmate had swung first. "I thought that I've got to get down there and render him helpless because as long as he can move, I'm in trouble."

It is obvious that Pirozzi would pose difficulties for most correctional officers. Mr. Carter, in his submissions on Pirozzi, properly observed that he was easily provoked and possessed considerable physical strength. The



combination of these two elements would create potential trouble if Pirozzi was adversely aroused and felt that he was being treated unjustly.

Mr. Carter stated, with reference to the Pirozzi allegations: "There is no doubt that there have been times where force has been applied to the person of Pirozzi but it is respectfully submitted that this was in response to Pirozzi's attitude and application of force in the first instance and that any force required to subdue Pirozzi would be far in excess of force required to subdue the ordinary individual." From this statement Mr. Carter argued that no undue or unnecessary force was ever applied to Pirozzi while an inmate at the Toronto Jail.

The four allegations of Pirozzi have been individually considered, and findings have been made separately on each one. There is no doubt that Pirozzi had the propensity for violence and if not very carefully handled could pose a threat both to correctional staff and to other inmates. His reputation in this regard appeared to be known to correctional staff, and preceded his admission to any jail or other institution, so that stronger than average measures were taken by institutional authorities for defensive reasons. This would undoubtedly be sensed and resented by Pirozzi and a volatile situation could therefore quickly erupt.

From evidence in connection with other incidents, it can be seen that the "troublesome inmate" is not always treated gently by the correctional staff. At times, there is almost a situation of mutual challenge between inmate and officers and under such circumstances minor occurrences may quickly become major incidents. The fault may lie with the inmate, or the officer, or both. As has been shown so often in this report, each incident must be inquired into separately.

One thing is certain. Incidents are more likely to occur, and having occurred are more likely to accelerate, where one or more of the following situations exist: (a) the inmate is a "difficult problem case", (b) he is under tension, (c) he is in overcrowded quarters, or (d) he has no planned activity program to siphon off excess energy. The same result is also more likely where the correctional officer is (a) "short fused", (b) not properly trained, or (c) not adequately supervised by competent senior officers.

The question arises whether it is possible to rehabilitate a person such as Pirozzi. Will the same problems that present themselves while he is in a penal institution create a situation of danger to society when he is released from custody? Certainly ordinary confinement without a treatment program, and broken only by periods of solitary confinement, is not the answer. At some time or other most of the Pirozzis in our jails will be released.

Many correctional authorities have become disenchanted with the rehabilitation prospects of violent inmates who have been forced to live in a custodial atmosphere for a considerable period of time, a large part of which may have been spent in isolation, or segregation. The problem society must face is that eventually, with the efflux of time, the completion of their sentence, or some remission of total sentence by statute or by a parole board, these inmates will be released from custody and will re-enter society. It is therefore of great importance that, upon release from custody, they be rehabilitated, if not completely at least as far as can effectively be done for

social, humane, and even economic reasons.

It is therefore necessary that special staff be trained who will accept the challenge to achieve at least partial rehabilitation, if not complete rehabilitation, for inmates such as Pirozzi. It may well be that, with the passage of time, the maturing of personality, and the mellowing of age, the violent inmate himself may undergo some physical and mental transformation. But can society wait for such individual, unaided self-metamorphosis? The experiment being conducted at Butner, North Carolina, referred to elsewhere, might be of some assistance.

Pirozzi was on the witness stand for two days and it is interesting to note that despite his record of violent behaviour there was no untoward outburst while he was giving evidence, such as had been exhibited by Nathan Somerton. Quite to the contrary, Pirozzi was polite and appeared relaxed. No doubt the quiet and courteous manner in which he was treated by all who questioned him had some bearing on this. One could not but speculate whether known difficult inmates, if handled carefully by mature, well trained, and low keyed correctional officers, would not react in kind and cause fewer problems.

The answer may lie in having such officers assigned to this type of inmate in special teams, and I would so recommend, at least as an experiment. The problem inmate should be housed in a separate section of the jail. The ratio of both line officers and senior officers to inmates should be higher than the average. The hours of duty for these officers should be shorter and there should be some extra pay incentive. The team might be augmented by a psychiatrist and a social worker, and should in any case work in close liaison with such people.

As has been said elsewhere in this report, a small portion of the inmate population causes most of the trouble and problems at the Toronto Jail. The average line officer is not equipped by temperament to deal with the very difficult inmate, nor does he have the extensive training that would be required. Even if he had better than average ability in this regard, because of his varied experience, he cannot devote sufficient time to the more demanding inmates, and therefore in most cases he is not inclined to expend the extra effort that is necessary. Further, when the very difficult inmate is in the same overcrowded corridor as the general jail population, the correctional officer is not working in an atmosphere where he can, without distraction or interruption, apply the extra time and patience that are required.

But the situation snowballs, for under the present setup at the Toronto Jail the problem inmate may infect other inmates in the corridor, multiplying the number of inmates who could cause trouble. This puts an added burden on the correctional officer and lowers his ability to cope objectively with the other inmates who are now also posing a problem for him. To restore order in the corridor, the original problem inmate (and perhaps others) is moved to segregation. The inmate(s) may object to this move with varying degrees of aggressiveness. Action by the inmate(s) may be followed by reaction by the correctional officer, the nicety of which may not be measured too carefully, and thus an incident develops in which there

is an allegation that a correctional officer used excessive force. In some cases, the force used may be purposely excessive, as a deterrent example to the inmate in question or to other inmates.

Why create problems by putting the very difficult inmate in a general corridor to be handled by the average correctional officer? Why "solve" the problems thus created by having to remove the difficult inmate on some predictable subsequent occasion and place him in segregation? Pirozzi was placed in segregation for an uninterrupted period of 40 days! I am satisfied that the reason was that the Toronto Jail authorities considered him so difficult (and possibly dangerous) that it was easier (and possibly safer) for them to keep him in segregation for that extraordinary length of time than to return him to a corridor where they had neither the facilities nor the staff to handle him.

Did Pirozzi's conduct during his two-day stint before the Commission point to a need for a different approach with this type of inmate? Perhaps the time was too short and the conditions too far from the stress and strain of a custodial institution where guarded and guardian come into contact, to permit a valid answer to that question.

Would it be better to concentrate all "violent" and very difficult inmates in a special institution? Regardless of the answer, the very nature of the role of the Toronto Jail indicates that it will be obliged to house some of these inmates, even if only for relatively short periods of time. Therefore such a special institution, even if it were to be set up, could not completely solve this problem for the Toronto Jail. The answer in so far as the Toronto Jail is concerned must be a separate section in the jail with its own specialist correctional staff. Segregation cells as they are now known should be reserved as a final sanction for those who cannot function anywhere else.

Although the terms of reference of our Commission are referable to the Toronto Jail, the problem is not singular to that institution. Our visits and discussions elsewhere reinforce the conclusion that it is a small percentage of the population in any penal institution that creates the majority of the problems and absorbs a disproportionate amount of the time, effort, patience, and stamina of the correctional staff. Nor can we, zeroing in on a situation at the Toronto Jail, be unmindful of what is happening elsewhere in Ontario and indeed throughout Canada. The Toronto Jail is not an oasis functioning solely unto itself.

The police records of many inmates who gave evidence before our Commission showed that they had spent time in other jails and custodial institutions. How they were dealt with elsewhere may well have been responsible for their behaviour at the Toronto Jail. Conversely, time and effort spent setting up a special unit in the Toronto Jail, and training carefully selected officers to staff it, could well benefit other correctional institutions, as well as the Toronto Jail itself.

If the recommended experiment is implemented at the Toronto Jail it might help to solve one of the jail's biggest problems. From a study of the causes of the incidents already reported to this Commission, it is hoped that it would reduce considerably the number of similar incidents in the future. One would be very naïve to think that the above suggestion would be the



cure-all for the jail's problems. Some persons are too dangerous to be left free in the outside world. They have to be confined to jails, prisons, and penitentiaries. And some of them will run afoul of the rules and regulations wherever they are housed. These will continue to require segregation from other inmates. It would also be most impractical to advocate the discontinuation of the use of isolation cells.

## GOULD ALLEGATION

One of the witnesses called with reference to Pirozzi's second allegation was Ray Keith Gould, an inmate who had been transferred with Pirozzi from Millbrook to the Toronto Jail via the Lindsay Jail.

He described what he said was called the "ghost train" as a means of coping with difficult inmates. "You go from county bucket to county bucket." An inmate would be left in a jail for a couple of weeks and then be transferred to another jail for a short time. "That way you cannot get to know anybody and instigate trouble."

Other inmate witnesses had referred to frequent transfers, but there was no evidence that it was a Ministry policy designed to keep difficult inmates "off balance" and "on the move". It was similar to the "goon squad" rumour – prison scuttlebutt based in part on fact but open to other, more acceptable, interpretations.

Gould heard some screaming and swearing by Pirozzi, but was unable to shed any other light on his second allegation. He did indicate, however, that he himself was handled rather roughly after being told in the admission area, "You're next, Gould." He also said he was told, "If you cause [deletion] trouble somewhere else, you are not going to cause [deletion] here."

I do not find any fault with such warnings if they are not accompanied by an assault. Gould, however, did allege an accompanying assault; he said he was punched in the body and grabbed around the throat, and, after being "dropped to the floor", was picked up again by the hair three times. No officer was identified by Gould as the one who struck him.

Gould admitted that he might have used obscene language himself, and that he probably pleaded guilty to the misconduct charges that were brought against him. The Misconduct Report recorded guilty pleas to the charges of (a) "using foul language", (b) "disobeying any [sic] lawful order", (c) "conduct himself in a manner detrimental to the institution program", and (d) "threaten to attack an officer".

Gould said he pleaded guilty to the charges "because I always plead guilty. You can't argue."

C.O. 2 Herbert Hogg was the correctional officer Gould was alleged to have attempted to strike. He thought the Gould incident "must have been pretty minor . . . otherwise . . . it would have stuck in my memory had it been serious or had I been hit".

Gould's medical record on the day of his admission indicated no complaints and a negative physical examination. There was therefore no confirmatory evidence of Gould's allegation. In fact, his medical report tended to negate his complaint of excessive use of force.



## The Diano Allegations

*"He is so angry and impulsive that he is likely to do himself serious harm as a result of any provocation, real or imaginary." (1968 psychiatric report of Ontario Reformatory, Guelph)*

*"I felt at that time he needed talking to more than anything else, he needed to be calmed down." (C.O. 5 Stanley Johnson)*

Joseph Giuseppe Diano was 26 when he gave evidence in June 1975. He was born in southern Italy and came to Canada at age 14, in 1964. He attended school for only two years after his arrival in Canada. "I didn't want to go any more. Then I went to training school." Diano was 5'3" in height and weighed 124 pounds. His police record went back to 1966 and contained several charges for offences such as forgery, fraud, uttering, and false pretenses.

A 1968 psychiatric report of the neuro-psychiatric clinic of the Ontario Reformatory, Guelph, was filed along with other medical documents. It indicated at that time "a personality disorder in an immature individual of low grade intellect who is also emotionally disturbed and shows marked impairment of judgment". The report also stated, "He is so angry and impulsive that he is likely to do himself serious harm as a result of any provocation, real or imaginary."

A 1969 report from the same source read in part: "This man was returned from Penetang (Ontario Hospital) . . . and has continued with his childish

behaviour due to social maladjustment. He was placed in a cell in B3 [at Guelph] over the weekend and is reported to have yelled constantly for 36 hours. The yelling was relieved yesterday by the administration of Sparine intermuscularly. Today the subject is quite bright and cheerful but maintains that if he is returned to the main body of the institution he will again be in trouble."

The written allegation made by Diano was, "I received an unjust beating while handcuffed by three members of the Don Jail staff (one an officer) during July of 1973 which I intend to take action against as soon as I am able."

The "officer" referred to was C.O. 5 Stanley Johnson. The other two against whom allegations were made were C.O. 2 Alan Joseph King and C.O. 2 Joseph Peake.

During the course of his evidence Diano also referred to a later matter which also involved Peake and which allegedly took place in May 1975.

## FIRST ALLEGATION

One of the jail nurses was giving out medication on the landing outside Corridor 1C. Diano was on Valium at the time. The nurse was unable to find his medication although she had some medication on the tray for a "Joseph Piano". She said she would check and see whether "Piano" should have read "Diano". She stated in evidence that Diano became aggressive, shouted, used foul language, and threatened "to do something" if he did not receive his medication "right away".

The nurse, in her report to the Superintendent, said the incident occurred at about 6:00 p.m. She told the night staff to ask the morning staff whether there had been a mistake in the name. No doctor was on duty in the jail at the time and apparently none was called.

This was another example of the need for round-the-clock medical staff at the jail. The matter could have been resolved quickly by a doctor. It is understandable that a nurse would not want to risk giving medication to an inmate if there was any confusion over his surname. One can also understand, without passing judgment on it, the reaction of a tense and aggressive inmate deprived of his night-time sedation because of what seemed to him to be an obvious administrative error.

The nursing staff should be protected from inmate abuse, and King removed Diano from the corridor. King denied that Diano was taken to the 1B segregation cells, but the Corridor 1C log, made out by a fellow officer, read as follows:

6.45 Medication issued.

6.55 Diano on charge transferred to 1B.

7.15 Diano returned to Corr. [Corridor]

In light of this record, I accept Diano's evidence that he was taken into the segregation area and placed in a segregation cell, the normal procedure for an inmate being placed on charge. Johnson, the senior officer who was called to attend, said that Diano could have been placed in segregation prior to his arrival around seven o'clock.

Diano's version of what occurred was that, at the time of the medication mix-up, King uttered a racial slur against him, to which he mumbled something in reply about "the uniform" going to King's head. He said that King might have heard this. Diano alleged that he was taken from the corridor and slapped in the face by King and also kicked in the leg. He said Johnson then arrived and asked if he had threatened King. King replied in the affirmative and also described what had happened when the nurse was present.

Diano said that Johnson then punched him in the chest and also banged his head against the wall, and at the same time King kicked him again in the leg. He said that Johnson ordered King to place him in segregation, and then left.

Fifteen to 20 minutes later, Diano said, King together with Peake came to his segregation cell, and he was removed and punched in the stomach and chest by both of them. Diano said he was then returned to his corridor cell with a warning by both these officers that if he said anything about the matter he would be taken from his cell and given a worse beating.

King denied that he made any assault on Diano or any racial slur. He also denied that Diano was in segregation. Further, he denied that Johnson struck Diano and said that Peake was not involved at all. With reference to his written report on the incident, King stated that when he wrote that Diano was "violent" with the nurse he meant "verbally violent".

Diano was not the first inmate to allege that Johnson, a senior officer, had used excessive force or encouraged it. Johnson, in his evidence, denied that "any violence" was used on Diano while he was present. "I felt at that time he needed talking to more than anything else, he needed to be calmed down." It was Johnson's evidence that he transferred Diano to another corridor (from 2C to 1C). His evidence was confusing and not altogether satisfactory in the light of the 1C log, which indicated that Diano was taken from this corridor and returned to it.

As for Peake's involvement in the July 17 allegation, he denied that he was working on that floor. He referred to Diano's allegation as "pure figment of his imagination". He admitted to being present at the time of the second allegation (May 23, 1975) but said he was not guilty of any wrongdoing at that time. It may be that Diano purposely tried to implicate Peake in the July 1973 incident as well as in the second incident. In any event, there is no confirming evidence to link Peake with the July 1973 incident. Such being the case, I was unable to identify anyone other than Johnson and King with the questionable use of force on that occasion.

That Diano felt himself aggrieved because of an unwarranted assault was beyond question. He made several complaints at the time to, among others, his family, his solicitor, and one of the jail doctors. Both his solicitor, who saw Diano's chest and legs within a week, and a jail doctor, who examined him two days later as a result of his complaint, were unable to find any

evidence of bruising.

I am of the opinion that, between the time he left Corridor 1C at 6:55 and returned to that same corridor some 20 minutes later, Diano was taken to the segregation area and treated with some degree of roughness there. It may well be that the treatment he received was designed to be a warning and was less of a punishment than if he had been placed on charge. If so, it did not accomplish its purpose, for the next day Diano was charged with throwing water on the person and bedding of another inmate.

On his record, Diano may well be a person who should be kept in a special section set aside for "difficult inmates". This has been discussed in connection with the Pirozzi allegation and elsewhere.

## SECOND ALLEGATION

The second incident is alleged to have occurred in May 1975 and it involved a claim by Diano that he was punched in the stomach by C.O. 2 Joseph Peake. Peake's contention was that he had put his arm straight out, palm up, to stop inmates from moving outside a corridor and that Diano had purposely walked into it. There was then a threat by Diano of an assault charge. According to Peake, Diano deliberately provoked the incident, and when he would not move back Peake used "necessary force which was a minimum to put him against the wire mesh where I wanted him to be".

Michael James Mazur, an inmate witness, spoke of the push that moved Diano back as being neither a love tap nor one that hurt him. He doubted, however, that the motion by Peake was an effort to stop Diano from going downstairs.

It is obvious that correctional officers, in order to perform their duties efficiently, must have some discretionary leeway. They should, of course, not be allowed to tyrannize inmates physically or mentally. But, on the other hand, they should not be harassed by the worry of having to answer frivolous allegations. Some common-sense approach should be adopted. By having correctional staff take professional pride in their work and by having senior staff exercise proper supervision and control, the two extremes should be reduced in number. To expect them to be eliminated completely would be to blindfold oneself unrealistically to the many and varied factors that have contributed to the number of the allegations that had to be investigated.

During the Diano hearing, a justice of the peace, Donald Malcolm McLeod, was called to give evidence. He stated that he had been a justice of the peace on duty at the Toronto Jail for five years. This duty was primarily as a bail magistrate. In addition to working at the Toronto Jail on bail applications and the release of prisoners, he also worked at the Old City Hall. During the month of May 1975 he was the designated justice of the peace at the Toronto Jail.

At the request of Diano he interviewed him in the Legal Aid office at the



Toronto Jail. He said that Diano complained that he had been pushed or struck by a correctional officer. Mr. McLeod indicated that this was the first time he had interviewed a prisoner at the jail. His impression was that "quite a few prisoners were just jumping on the bandwagon, that they wanted to see a justice of the peace to lay a charge against a guard. I interviewed all the ones I had a request to see and got to the point where I was explaining to them when I first went in to see them, I explained to them, 'I am a justice of the peace, I am here, I don't know why you are being detained in the jail. I want to explain to you what the procedure is.' And I would explain to them at that time and then I would interview them, listen to the complaints, investigate thoroughly, and if there was sufficient evidence [I would tell them that I would] lay a charge, but if they were in the process of being transferred to another institution, if a charge was laid, they would have to remain in the Don Jail. They would have to remain there until they had a chance to give evidence in court. I did not think I was frightening the prisoners. When I explained that to them they just wanted to abandon all their rights to laying a charge."

Mr. McLeod stated that at the time Diano made his complaint to him, "there were no visible marks on him . . . and I just didn't think there was enough evidence without even seeing him a second time to warrant any charges being laid, but I gave him the opportunity to think it over, and if he wished to lay charges, to call the next day." I said, 'I want you to think about it. I will be here tomorrow. If at that time you wish to see me again we can go into it further and you make the request and I will come back and see you.' With that, I never heard any further request to come back and interview Mr. Diano."

## DIANO SUMMARY

The two allegations of Diano were almost two years apart. Although Diano named Peake as being present both times, I find that he was only involved in the second allegation. This leaves King and Johnson as the two remaining identified officers in the first episode.

I think some unnecessary force was used on Diano by King and possibly by Johnson as well. When I refer to the force as unnecessary I have in mind force that was not required either to contain him or to take him from one place to another. I do not accept Diano's allegation that he was handcuffed at the time, nor do I think he was assaulted to the extent he would wish one to believe.

Even if it was not unfounded, I dismiss Diano's second allegation as being so trivial in the perspective of our terms of reference as to fail realistically to constitute excessive use of force.



# The Vetere Allegation

*"He was a guard and I was an inmate. There's the clash. There was no personality involved in it." (Joseph Vetere)*

*"... the procedure of isolating inmates before real trouble began was in keeping with his philosophy." (Reference to former Deputy Superintendent Alexander Gray)*

*"[It was] a precautionary measure rather than a disciplinary one." (C.O. 2 Victor Reynolds)*

Joseph Bernard Michael Vetere was born in Toronto in September 1952 and was therefore 23 at the time of giving evidence on November 6, 1975. His police record included five convictions for theft as well as drug convictions and a six-year sentence for robbery.

Vetere complained of an assault that occurred in August 1969. He was wrestling with another inmate, one Robert Burke. They were told to stop and when they did not, they were called out of Corridor 1. He identified the officer who called them out as Deputy Superintendent Alexander Gray. Vetere acknowledged that, a short time before, he and 13 other inmates had been transferred from Corridor 5 to Corridor 1 for failing to obey orders.

Vetere related that Mr. Gray had asked whether Burke and he wanted to go to "the hole". Probably this was by way of a warning. When they replied that they did not care, Vetere alleged, Mr. Gray obtained the assistance of

six other officers and escorted Burke and him to the old segregation cells. He stated that they were ordered to remove their shoes and socks and, after they had done so, the "six guards attacked us. And we both got into a [one] cell so they would have a hard time getting at us." He said they remained in that cell for three or four hours.

Vetere alleged that the attack was led by C.O. 2 Albert Reynolds, who kicked each of them for five or ten minutes. He said Reynolds stopped after Gray came down and told Reynolds to "cool it".

Vetere said Reynolds came back later with some food for them and told them not to say anything about the incident, warning that they would be returning to the jail and he would still be there.

When questioned about any injury from the alleged assault, Vetere stated, "My arm was bothering me after and I had bruises on me but it was nothing serious I guess." He alleged that he sustained a fractured arm on a later occasion, but not as a result of this incident.

As for the fractured arm, he said this was sustained while he was at the Toronto Jail and "definitely" involved correctional officers, but he gave no dates and was so indefinite about the matter as to leave grave doubts about the allegation. A filed medical report of the Toronto General Hospital contained a statement of Vetere that this injury was caused by being struck by a stick while at a plaza, which was his "hang-out" at the time.

Vetere stated that he remembered Reynolds because he was "notorious then in the jail". Elsewhere in Commission evidence, Reynolds had been referred to as "Alice the Goon", probably because his size and build suggested the cartoon character. Vetere said he had some "run-ins" with Reynolds but denied that there was any personality clash between them. "He was a guard and I was an inmate. There's the clash. There was no personality involved in it."

The whereabouts of Robert Burke, Vetere's fellow inmate, was unknown at the time Vetere's allegation was heard by the Commission. Burke had given a statement to the Commission investigators earlier, and this statement was read in, with the notation that it was not under oath and that counsel for the correctional officers did not have any opportunity of cross-examination. Had I been sitting as a judge at a trial, this evidence would have been excluded, but on a Commission inquiry I considered it to be of some assistance, bearing in mind the two above-mentioned qualifications.

Burke's statement differed from Vetere's evidence in that, according to him, only two correctional officers were involved and not six, in escorting Vetere and him to the old segregation cells. Like Vetere, Burke complained of assault by Reynolds, who was one of the two escorting officers. Burke identified the "white shirt" not as Gray but as either C.O. 5 John Moquin or Assistant Superintendent John Russell. Both of these identifications by Burke were proven wrong. Moquin was not on duty on the day in question (August 11, 1969). Mr. Russell, although he had been employed by the Ministry for 22 or 23 years, was not a member of the Toronto Jail staff until 1973.

Mr. Gray had worked for 17 years for the Ministry, retiring in 1970 with the rank of Deputy Superintendent of the Toronto Jail. He was on duty at

the jail on the day in question but he could not recall the incident. He conceded that the procedure of isolating inmates before real trouble began was in keeping with his philosophy. He stated that if one or two inmates were "horsing around" and refused to stop when told to do so, the trouble could spread, so that it was necessary to "nip it in the bud". He said that he might then use the new or the old segregation cells for half an hour or an hour. If the inmate said he was sorry and promised to behave he would be returned to his corridor. Mr. Gray indicated he would not countenance the use of force and therefore would have remembered the incident had he seen force being used. He said that it was "most unlikely" that six officers would be required for a 16-year-old boy.

Mr. Gray stated that there should have been log entries for the time Vetere and Burke were in segregation. There was none.

Reynolds was employed as a C.O. 2 at the Toronto Jail from August 1968 to January 1972. His evidence was that Burke and Vetere were "a bit hostile" at being transferred to Corridor 1 and demanded to be returned to Corridors 5 and 6. Mr. Gray, who was in the area, ordered Reynolds to take them to the old segregation cells and "let them cool off a bit". Reynolds then took the young inmates to segregation. He described this as "a precautionary measure rather than a disciplinary one". He stated that no force was required to place them in the cell and he denied hitting either of them. He did not think that Mr. Gray was present in the segregation area at the time.

The evidence with reference to the Vetere allegation was contradictory in many of its aspects, not only as between inmate and correctional officer, but as between Mr. Gray and Reynolds.

In weighing the evidence I make the following findings. Vetere and Burke were misbehaving. Their conduct was not so serious as to justify placing these young inmates on charges. Mr. Gray was correct in attempting to "cool them off" by isolating them from the others in their corridor. It is unfortunate that the old segregation cells, which had been condemned, were used for this purpose. Reynolds estimated the time they were so confined at four to five hours. I accept the allegations that they were both in the one cell, which in that area was admittedly a narrow one.

In other evidence before the Commission, inmates who were confined to the old segregation cells were "logged" in the Corridor 1 log. This admittedly was not done in this case. The omission was wrongful and it prevented the senior officers on rounds from knowing of the presence of inmates in this seldom used location and of inspecting their segregation cell. In this particular incident it may not have had much practical significance, since it was the Deputy Superintendent, Mr. Gray, who had ordered them to be put there. If, however, the cell had been visited, then a complaint might have been made against Reynolds at that time.

I find that some force was used by Reynolds when the two inmates were placed in the cell. I do not accept his evidence that they entered passively and that he did not use any force on them. Since he made this double denial, I find that he did so to cover up the use of more than necessary force. I accept Vetere's statement that such force resulted in no more than bruises

and was not serious. I do not accept Vetere's evidence that his arm was fractured by reason of this or any other occurrence at the Toronto Jail. I find that the injury which resulted in his arm being immobilized for a possible fracture was a result of being struck while in a plaza and not in the Toronto Jail.

The overriding cause of this whole matter was the lack of any suitable facility or sports program wherein young inmates could work off their excess energy. The alternative of putting young inmates in condemned segregation cells, even for four or five hours, is similar to keeping pressure within a boiler rather than using a safety valve to allow it to escape properly and under control.

## The Copeland Allegations

*There remained for this relatively young man a little more than 29 years yet to be served in penitentiary sentences . . . he was neatly dressed in a conventional business suit. He was well spoken. His manner was pleasant and his language temperate. He was polite without being overly deferential or cowed. He seemed to exhibit a directness and quiet self-confidence that would have been acceptable at a business meeting or a social engagement. (Reference to Brian Copeland)*

*"He didn't name anyone specific, he just suggested that 16 or 17 guys were at him." (C.O. 2 Herbert Hogg, referring to inmate John Simon)*

*"The only thing I could do was drop on him . . . the quickest way I could think of, of stopping him . . . I just jumped." (C.O. 5 Alexander Lochhead, on his action after an alleged attack by Copeland on another senior officer)*

*"I think they [inmates] have a right to know what they are being charged with." (C.O. 5 John Moquin)*

Brian John Copeland was one month shy of 29 years of age. It was unfortunate from his point of view that at the time when he testified before the Commission there remained for this relatively young man a little more than another 29 years yet to be served in penitentiary sentences. Expressed algebraically, the equation would look like this:



Let  $X$  be the age of the inmate

Let  $Y$  be the length of his sentence yet to serve

Then  $X = 29 - 1/12$  years

$Y = 29 + 11/12$  years

$\therefore Y$  is greater than  $X$  by 1 year.

The above calculation does not take into account any statutory remission or the possibility of release at an earlier date by the Parole Board. But bearing in mind Oscar Wilde's observation in his "Ballad of Reading Gaol" that "each day is like a year, a year whose days are long" it is easy to see that Copeland will be in custody for a long time.

Because of the length of time he still had to serve, and his history of prison escape, the matter of his security while he was giving evidence was discussed with me before he attended. The question of whether he should appear in leg irons and handcuffs was broached. Counsel agreed with me that he should be free of any such mechanical restraints. Other security steps were taken that would not affect his person. Having been spoken to in this regard, I had conjured up a mental image of the witness-to-be which proved to be dramatically erroneous.

What type of person was Copeland when he gave evidence? Unlike many young inmate and ex-inmate witnesses, he was neither long-haired nor blue-jeaned. Instead, he was neatly dressed in a conventional business suit. He was well spoken. His manner was pleasant and his language temperate. He was polite without being overly deferential or cowed. He seemed to exhibit a directness and quiet self-confidence that would have been acceptable at a business meeting or a social engagement. The above comments refer only to Copeland's appearance and manner of giving evidence. The matter of his credibility was considered only after all the evidence had been heard.

One had to look twice when his record was read and he acknowledged the truth of it. There were 10 separate convictions between March 1964 and December 1973, some of them involving multiple offences. The list included the offences of armed robbery, breaking and entering, theft, possession of a dangerous weapon, and escaping lawful custody.

Where along life's road had this young man, with the potential for success within the framework of the law, first taken a wrong turn? What had prevented him from returning to a lawful society after that? Whatever the answer or answers, one could not but be appalled at the tragic waste of this life and of the lives of some others who appeared before the Commission. Did the explanation lie in any way with our correctional system? At the time when he was first placed in custody he was 18. Could he have been helped, deterred from future criminal activity, at that time?

One may read of massive numbers of our citizens being in custody in our Canadian prisons. We have one of the highest per capita rates in the Western world in this regard. But statistics, when unrelated to individuals such as the Copelands and others who came before the Commission, tend to be so impersonal as to be almost meaningless.

Copeland's complaint concerned an incident that occurred on October 15, 1968. He related that there had been a corridor fight among the inmates, as

a result of which an older man by the name of John Simon was “almost totally unconscious”, having been “kicked from behind”. Copeland related: “Finally I said that was enough and I grabbed him under the armpits and I dragged him down to the end to the gate.” He said that, after he had “propped” Simon against the wall, he waited for a correctional officer to come and take Simon out of the corridor. He said that no officer was present during the assault, but that one was there when he propped Simon against the wall. He denied any involvement in the fight during which Simon was injured.

Simon was removed from the corridor by C.O. 2 Herbert Hogg, who said his main concern was to have Simon taken to surgery. Although Hogg wrote up a Misconduct Report in which Copeland was charged with assaulting Simon, he said, the information about Copeland’s complicity did not come from Simon. Referring to Simon, Hogg stated in his evidence, “He didn’t name anyone specific, he just suggested that 16 or 17 guys were at him.”

As for why he charged Copeland, Hogg said, “I presume I wrote this charge sheet on information that I got from the Chief [C.O. 4 John Moquin] later on . . . the Chief must have come to me and said . . . ‘Write up the charge sheet because Simon has alleged that the particular person who has assaulted him was Copeland.’” Hogg said that he never questioned Simon about that information.

Moquin (later a C.O. 5) was asked if he had interviewed Simon “at all”. His reply was, “Not that I can remember, sir, no.”

Stopping at that point in the sequence of events, we have Copeland being charged by Hogg who acted on instructions from Moquin, who neither saw Copeland assault Simon nor recalled being told about it by Simon. According to all evidence, Simon was badly injured and no correctional officer saw the assault. Copeland indicated that he was “the good Samaritan”, coming to Simon’s aid. Did Simon, injured and confused, misinterpret this help? Did some correctional officer, other than Hogg, see Copeland with his arms about Simon and misinterpret the part Copeland had played? There seems to have been a conclusion reached by the correctional staff that Copeland did in fact assault Simon. This may have been so, and Copeland may not have been telling the truth. But there was no evidence to justify that conclusion, and indeed the only evidence, that of Copeland, was to the contrary.

As for the jail hearing on the charge of assaulting Simon, Mr. Whitehead made no recorded disposition, merely cross-referring it, “See charge #2.”

The second charge that day against Copeland was one of “using foul and threatening language and assault”, in an incident involving Moquin.

According to Copeland, some time after Simon was removed from the corridor, he (Copeland) was called out of Corridor 2C on the pretext that his lawyer wanted to see him on 2B landing. Once out on the landing, he said, he was met by “five, six, seven guards” who informed him he was going “to the hole”. He said he asked why and they refused to tell him, saying, “We are not telling you anything.” He related that he was then grabbed, to which he “violently” resisted by squirming, but he did not strike or kick any officer. He said he then received some kicks and punches including a punch on the head from then C.O. 3 (later C.O. 5) Alexander

Lochhead. He alleged that this caused "a slight cut". He also alleged that his head hit the floor, rendering him unconscious, and that when he awoke he was in a segregation cell.

The evidence of Lochhead was that his first knowledge of anything awry was when he was told that there was trouble on the second floor caused by someone refusing to go into segregation. When he arrived at the scene Copeland was "backed up against the wall". He thought there were two or three officers present. He stated that Copeland said that it would take six officers to put him into segregation and that some of them would get hurt. He alleged that foul language was used by Copeland, who also "took a swing" at Moquin. He did not know whether Copeland actually "hit" Moquin. In his report, Lochhead had written, "Then he struck at Mr. Moquin."

In any event, as a result of the alleged attack on Moquin, Lochhead said, "The only thing I could do was drop on him. . . . It was the only . . . the quickest way I could think of of stopping him . . . I just jumped." Lochhead indicated that he struck Copeland with his knees, "about chest level up to the top of his head". As a result, Copeland "went limp" for long enough to be carried into segregation. The door was closed. Lochhead then watched Copeland get up and sit on the side of the bed. He denied punching Copeland in the head as alleged. As for Copeland's head hitting the floor, Lochhead said that this may have happened.

Lochhead was asked whether Copeland could have been put into segregation with less force. His reply was, "Well if he went along when we carried him and if he didn't swing there wouldn't have been any force."

Mr. Whitehead found Copeland guilty on this second charge and sentenced him to three days of segregation on restricted diet. If there was a swinging at a senior officer, this was a relatively light punishment. It may be that Mr. Whitehead considered that there was some provocation that resulted in Copeland's "swing" or that the swing was an attempt to get free rather than an attempt to hit a senior officer.

It is unfortunate that there was not a full inquiry at the time and a finding as to whether Copeland assaulted Simon. On the evidence before me, I must find that he did not. If that was in fact the case, one could understand Copeland's strong reaction on being brought out of the corridor on the pretext that his lawyer wanted to see him, and then told that he was going to segregation. To top that off, there was the evidence that when he inquired as to the reason for segregation he was told that none need be given.

The question of advising an inmate why he is being placed in segregation and the necessity for quick isolation of an inmate before trouble spreads were discussed with Moquin.

THE COMMISSIONER. Did you know at that time what the alleged offence was for which Copeland was being put in segregation?

A. No sir.

Q. So, if he asked you why, you would not have been able to tell him?

A. I would not have been able to give any details, definitely no, sir. I would have more than likely said, you are being put on charge, but I would not know why at that time.



Q. Would there be sufficient time to have inquired what the charge was that he was being faced with?

A. Not really, sir. Usually the idea is to get the person charged away from the rest of the area and get him into segregation first. It gives the officer time to write out the charge in the meantime and we get it sometimes maybe half an hour or an hour later.

Q. But I was just wondering if there was time for you to receive a verbal report as to what he was going to be charged with?

A. It is quite possible. I don't remember offhand now but we were busy putting him in the segregation cells. At that time we had just left the area and waited for the officers to make a report.

Q. That was the first concern, to have him isolated and put into segregation?

A. Right, sir.

Q. And then, with reference to the charge, if a person wants to know why he is being put in segregation, do you think it helps defuse the situation or does it aggravate it by telling him why he is going into segregation?

A. I don't believe so. I believe they have a right to know why they are in there, yes. I think if Copeland had asked me when I came around on my next visit I would have told him what he was charged with. I don't recall him asking me, sir. . . .

Q. What I am asking you is about procedure. Is it better to tell the person why he is going into segregation?

A. I think it would be better, yes. I think they have a right to know what they are being charged with.

Q. Does that tend to quieten them down or at least defuse the situation?

A. It may, if a fellow is uncertain of what he is being charged with, it might tend to quieten him down a bit.

As it was, the situation got out of hand and apparently Copeland got out of control. There was no excuse, no matter what the provocation, for his attempt to strike Moquin. He denied the attempt, but I find that his admitted violent effort to free himself did put Moquin in physical danger. Under those circumstances, Lochhead was justified in trying to control Copeland. The more violent the inmate, the greater the danger and the more necessary the use of force to control the inmate. As for the degree of force that would be justified, this is dependent upon all the circumstances. Lochhead's admitted "kneeing" or "dropping" of Copeland would be considered extreme in most circumstances. But is it best to immobilize an inmate instantly and thus end the scuffle and the potential danger? At times half-way measures may only prolong and exacerbate the situation. Certainly, if more officers can be summoned to hold an inmate's arms and legs, or if the inmate can be handcuffed by use of the plastic cuffs discussed elsewhere, extreme measures may not be necessary.

Lochhead, in his evidence, stated that he adopted "the quickest way" he could think of to stop Copeland. If it was that, and if the evidence was correct that Copeland had purposely struck at Moquin, then how can one criticize Lochhead under such circumstances? If, however, Lochhead attempted not just to control but to punish, particularly in light of his state-

ment in the Misconduct Report that during the struggle Copeland "ripped the watch from my wrist breaking the strap", then the force used would be unjustified. As to which was the correct version, I was impressed by Lochhead's candour in admitting the action he took. I must also give some weight to Mr. Whitehead's finding of guilt, presumably after an inquiry. Further, Copeland admitted that he did not complain to Mr. Whitehead about the incident, although he added, "There's no sense in complaining to somebody who is obviously the other man's boss. I'm a convict and he's a guard."

Copeland's reason for not complaining to the Superintendent if he did have a legitimate complaint, was similar to those put forth by other inmates. Although it is understandable, it is unfortunate if this is the sole reason. It was with this in mind that, during the Commission hearings and in outside discussions with correctional people, alternative avenues were probed for inmates to voice legitimate complaints. The setting up of a Toronto Jail Council, the employment of justices of the peace at the Toronto Jail, and the use of the Ombudsman's office have, as a result, all been recommended for consideration. There is also, of course, the Ministry's own investigative department, but this is not something usually resorted to directly by an inmate on short notice. That is not to say that it does not act upon complaints made to it by inmates, correctional officers, or jail administrative officials. Elsewhere in the report, instances of when and how it operated have been reviewed.



## Other “Write-in” Allegations

The allegations that were submitted to the Commission by way of “write-in” complaints, and were not among the four selected for oral presentation, were fully considered on the basis of written communications, statements obtained by the Commission’s investigators, and all other available documentary evidence including medical reports, Misconduct Reports, corridor log records, and attendance registers. Each inmate whose case was heard by documentary evidence was given a separate exhibit number. The documents themselves were lettered. The exhibit numbers and letters are given under the allegation headings.

A warning note must be sounded for readers of this section of the report. With few exceptions, where there was a filed transcript that had been used earlier and was once again considered applicable, the evidence was not given orally or under oath. Nor, equally important, was it subjected to the scrutiny of cross-examination.

Some assistance was at times obtained from the similarity of an allegation to other allegations that had earlier been heard orally, under oath, and with the benefit of cross-examination. Also, some correctional officer and inmate witnesses were already known to the Commission from previous allegations. If a favourable or an adverse finding had been made in a similar case against a correctional officer, it did not follow by any means that the same finding was appropriate in the new allegation. It was, however, a matter for consideration.



# The Mayer, Hamilton, Wilson, and Brathwaite Allegations

*Michael Frederick Nicholas Mayer (Exhibits 600A-M and 600 X and Y)*

*William Gordon Hamilton (Exhibit 600M)*

*Lenny Andrew Wilson (Exhibits 610A-I)*

*Wayne Brian Brathwaite (Braithwaite) (Exhibits 488A-E)*

The incidents referred to here came to the attention of the Commission by means of a written communication from Mayer. (Where such written communication was made *directly* to the Commission, that communication was usually given an "X" exhibit letter and the filed typed copy of it was referred to as Exhibit "Y".) As a result of Mayer's letter, the interview with him, and the investigation arising therefrom, inmates Wilson and Hamilton were interviewed and statements were obtained from them. Brathwaite was out of the country, having been deported to Trinidad.

I quote from the opening sentences of Mayer's letter:

Dear Sirs,

When I heard you were accepting letters from inmates concerning the charges laid by Mr. Dassy and supported by his girl friend, Miss Mannerholm, I felt I should write.

The guards, I feel, are only human. I have seen beatings, as well as received them, and in my opinion they were warranted. However, I have never heard

or seen any of these “systematic” or “brutal” beatings.

I would like to recall a recent incident in which there were 2 beatings.

Mayer’s allegations, as contained in his letter and subsequently added to during his interview, referred to incidents that occurred on August 17, August 20, and August 21, 1974.

## FIRST ALLEGATION

Mayer stated that on Saturday, August 17, 1974, he was taking a shower in the shower room (with other inmates) under the supervision of C.O. 2 Joseph Peake, C.O. 2 Charles Casey, and C.O. 1 Gary Dassy when another officer came into the room and said that they had to go to one of the segregation areas “to subdue a noisy inmate”. Mayer identified the inmate as “Bill Hamilton”. He said that Peake instructed Casey and Dassy to obtain “sticks from the office”. It would appear that Casey and Dassy returned shortly thereafter, even before Peake had time to join them. When asked by Mayer what had happened, he said “they said ‘nothing’ ”.

A statement was obtained from Hamilton. In it, he complained of general conditions at the Toronto Jail and of harassment by some members of the correctional staff. He also spoke of good and bad officers. Hamilton made no complaint of any assault on August 17. Indeed, his only statement that came close to being an allegation of physical excess concerned another occasion, during a period of segregation, when, he said, C.O. 2 George Pano bruised his arm and a finger by slamming his cell door.

Pano was not questioned on this, for to have investigated every minor complaint collateral to the main episode would have been adding ripples to ripples. Where they were relevant to the main incident, and even where they were unrelated but of some significance, such matters were investigated and evidence was brought forth. At times this meant excursions down side-roads and even along the by-paths leading off the sideroads, but, in general, we had all we could do to travel along the main highways and garner the evidence that abounded there, and the lesser matters were put into the hopper and became part of the *res gestae* of our Commission hearings.

I mention this out of fairness to Pano and other correctional officers whose names may have been mentioned in statements of witnesses filed as evidence and who were not always asked for their own versions of the allegation. The correctional officers named in the principal allegation were, of course, interviewed, and statements were obtained from them. Wherever, by reason of death, transfer, or illness, this was not possible, memos were filed.

With reference to Mayer’s allegation of an assault on inmate Hamilton on August 17, I find the same unsupported.

## SECOND ALLEGATION

On August 20, 1974, Mayer, Wilson, and Brathwaite were in custody in Corridor 10. Mayer and Wilson were 17 years of age and Brathwaite was 20. Mayer was born in Ontario, Wilson in Jamaica, and Brathwaite in Trinidad.

Mayer related that he was a corridor man working in the court cells (Corridors 7 and 8) when he became involved in an argument with C.O. 2 Peter Anson. He said that the two of them "never got along". And he added, "I have a short temper which doesn't help."

Mayer said that he later attempted to apologize to Anson, who refused to accept the apology. Had Anson done so, the incident would probably have ended there. Rebuffed, Mayer said, his temper "went" again, and when Anson was out of earshot he mouthed off obscenities at him. Brathwaite heard this and told other inmates. This caused a fight between Brathwaite and Mayer, and when Brathwaite, who was smaller than Mayer, apparently was getting the worst of it, Wilson went to his friend's aid.

Within a very short time the fight was broken up by a correctional officer. Brathwaite and Mayer were taken to the rotunda and apparently assigned some duties to help them work off their excess energy. Later they were returned to Corridor 10. No charges were laid. Just as diversions may be successfully employed in the outside community in lieu of prison sentences, so within the jail steps are sometimes commendably taken against inmates that do not involve charges or the overtaking of segregation facilities.

But the matter did not rest there, for when C.O. 2 Edward Dowhey and C.O. 1 Gerald Rowsell came on duty for the evening shift they called Brathwaite and Wilson out of the corridor. Mayer said that he got along "fairly well" with these correctional officers.

Dowhey said that it was Mayer's complaint to him that Brathwaite was a corridor "ring leader" and was threatening Mayer, coupled with Mayer's request for transfer to another corridor, that prompted him to call Brathwaite out of the corridor. He said that Brathwaite denied any knowledge of the matter. Dowhey said that he put his hand on the inmate's shoulder and "applied a little pressure" but did not strike him. He also stated that he warned him if he did not behave he would put him in a "heavier corridor", that is, one with larger and older inmates.

The evidence of Wilson was that Brathwaite and he, in turn, were taken out of the corridor and slapped about by Dowhey and Rowsell while being questioned. Wilson said he found the slaps painful but not sufficiently so to necessitate medical attention.

I think it is significant that Mayer, who was not a friend of the two West Indian inmates and who had complained about them, confirmed their evidence, saying that although he did not see the assault he heard it take place. It is also to be noted that Dowhey, who only confessed to applying "a little pressure" to Brathwaite's shoulder, stated that he later heard Brathwaite complain to another inmate, "Some guards worked me over."



If the situation was a developing one, Dowhey and Rowsell had a right to question inmates in the corridor, in order to keep control and protect other inmates. But in questioning or speaking to an inmate an officer need not touch him or apply even "a little pressure to his shoulder", let alone slap him around, which, the weight of evidence indicated, had taken place in this case.

However, if there was no immediate problem and the actions of the correctional officers were in the nature of an inquiry into an earlier affair and a meting out of some punishment as a warning, then they exceeded their authority. The matter should have been referred to senior staff. Indeed, Dowhey, overhearing Brathwaite's complaint of having been "worked over" by correctional staff after Dowhey had returned him to his cell, should have made a report to the Chief, thus leaving the matter for a senior officer to investigate. If Dowhey was innocent, he might have been cleared by such an investigation, and there might have been a subsequent retraction by Brathwaite. Not having followed that course, Dowhey should have realized that he would be under suspicion.

Rowsell, in his statement, said he had been working at the jail for only a month. Dowhey was senior to him and therefore he did not question Dowhey's authority to bring Brathwaite and Wilson out of the corridor. Rowsell indicated that his own role was a passive one, merely that of locking and unlocking the cells. He was identified as having taken part, but the extent of his role was not precisely defined. It may be stated, however, that it was secondary to Dowhey's.

Brathwaite and Wilson were described by Rowsell as "little inmates". Rowsell was 5'11" and weighed 221 pounds. Dowhey was 6'5" and weighed 253 pounds.

### THIRD ALLEGATION

It was indicated that Brathwaite had told Anson that Mayer had sworn at him (Anson) on August 20. Mayer alleged that he was put to work the following morning under Anson's supervision. Mayer alleged that he was in one of the broom closets getting a bucket when Anson came into the closet and, after telling him off, punched him a few times. "There were no marks but I felt the pain."

Mayer could have been put on charge for using profane and obscene language to a correctional officer. At times, instead of being charged, an inmate was put on a work detail.

Mayer related that after scrubbing "for several hours" he spoke to a senior officer with whom he was able to "relate" and was then told to return to his corridor. Meanwhile he had missed his lunch.

Anson denied using any force on Mayer. As for Mayer, philosophically he concluded: "Time heals all wounds and now I get along with Mr. Anson

... these beatings if they can be called beatings were deserved.”

In his submission with reference to this allegation, Mr. Carter observed:

This is patently a case of a bold accusation and an equally bold denial. In fairness to those involved the matter should be resolved in favour of Correctional Officer Anson. Mr. Mayer's charge is not substantiated, and though it could be valid, it is submitted that it would be dangerous to accept this allegation, standing by itself as it does.

Mayer's statement was the more detailed of the two and his reference to his "punishment" being deserved reflected a candidness that tended to weight the balance in favour of his version as against Anson's "bold denial". If the proof required had been, as in a criminal case, "beyond a reasonable doubt", rather than the civil "balance of probabilities" adopted in this report, my finding might be different. The finding is therefore that some unnecessary force was used against Mayer.

# The Campbell Allegation

## *Exhibit 490A-F*

This matter came before the Commission as a result of a letter written by Gerald Robert Campbell to the Superintendent, W. J. Taylor. Campbell requested an opportunity to talk to someone from the Commission about Dassy. The incident Campbell described occurred in July 1974. It certainly showed Dassy's unsuitability as a correctional officer, even though it fell short of involving any physical assault.

Campbell was born in Toronto and at the time of the incident was 35. His police record indicated a sentence of five years for rape in February 1967. He was released on parole in August 1969. In November 1970 he was sentenced to nine months for common assault involving a 14-year-old girl. He was also ordered to serve the balance of his 1967 rape sentence. In July 1974 he was arrested and charged with rape and having carnal knowledge of a girl (supposedly aged 8). In February 1975 he was found guilty of these offences and committed to preventive detention in the federal Oakridge (maximum security) Hospital as a dangerous sexual offender.

Word of sexual offences travels quickly by the inmate grapevine, and on July 22, 1974, while Campbell was being transported in a police van from the Toronto Jail to court he was assaulted by fellow inmates. When the judge heard of this incident, he ordered that Campbell be segregated from the remainder of the jail population for his own protection. Accordingly, he was assigned to 1B segregation.

Campbell alleged that on the same date (July 22) while he was in segregation, Dassy brought him his dinner and kicked it under his cell door, saying,

"Eat this you [deleted] diddle." He alleged further that Dassey then threatened, "I should come in and kick your [deleted] head in." Campbell said that when Dassy returned for the dinner tray he uttered similar threats.

The 1B log confirms that Dassy did relieve in the segregation cells at dinner time on July 22. For a two-week period at about that time Dassy worked in the nearby Corridor 1C on the 3:00 p.m. to 11:00 p.m. shift, and Campbell related that Dassy would incite the inmates in that corridor by shouting, "Who do you want most, Gerald Campbell or diddle?" The inmates would shout back, "Campbell." Dassy would command, "Louder," and again the inmates would shout back, "Campbell."

Campbell said that this harassment by Dassy was never in the presence of any senior officer, and that it terrified him and affected his nerves and made him feel that his life was in danger.

It is ironic that the tactics Dassy adopted against Campbell were a more flagrant example of the very conduct for which he had criticized C.O. 2 Thomas Turnbull in the case of Sham Maharaj — namely, spreading information among other inmates that one of their number was a child molester.

In the Sham Maharaj allegation, reported elsewhere in this report, there was some evidence that Turnbull had passed on information carelessly to another officer and that such information might have been overheard by the inmates. In the Campbell matter, there is no doubt that Dassy had acted deliberately. But whether unintentional or deliberate, the end result was the same, namely a breach of the correctional officer's duty to protect the physical well-being of the inmates under his care.

These incidents also show how correctional officers must curb their personal feelings, even where inmates have been charged with the most heinous of offences. The correctional officer is entrusted with the safety of all persons in custody and must ensure that safety.

# The Crowe Allegations

## *Exhibit 491A-O*

This allegation with reference to excessive use of force on inmate Donald Trent Crowe initially was made by fellow inmate Daniel Lovering rather than by Crowe himself.

Crowe, a Toronto native born in 1946, was arrested in December 1973 and charged with the non-capital murder of an elderly man. Lovering was housed in Corridor 1C. He stated that Crowe, who was in protective custody in nearby 1B segregation, was "beaten regularly".

Crowe, when interviewed, made mention of only two instances when he alleged he was assaulted. From supportive evidence, the dates appear to be December 29 and December 31, 1973. On each occasion I have concluded that although some force was applied it was justified and, in degree, no more than was necessary. Nevertheless, certain lessons may be learned from these incidents.

## FIRST ALLEGATION

Crowe related that for about a year and a half he had been on medication. He described it as a "blood leveller", and added, "It keeps my brain waves



at a certain point." A psychiatrist selected by Crowe's lawyer examined Crowe at the Toronto Jail, presumably with reference to his defence, and recommended a tranquilizer. But because neither the resident psychiatrist nor the doctor was on duty, the correctional staff could not implement this recommendation.

There can be no criticism of correctional staff for this. It is obvious that with their custodial responsibilities they cannot and should not be taking orders from inmates' visiting doctors save in most unusual situations. However, it does once again show the need for round-the-clock medical staff at the Toronto Jail to which a matter such as this could be referred.

The incident is well described in the statement of C.O. 5 Hugh Ramsden Nicholson, the senior officer on duty at the time. Nicholson said that he visited Crowe in the course of his inspections on December 29. Each time he checked Crowe's cell, the inmate remarked, "I'll rip your eyes out, if you open the door."

When Nicholson, on one of his inspections, told Crowe of the impending visit of his lawyer and psychiatrist and said that they were coming to help him and act on his behalf, Crowe replied, "Good, I'll be all right with them." Nicholson said he selected two officers he felt were competent, sensible, and responsible to cope with Crowe. These were C.O. 2 Herbert Hogg and C.O. 2 Murray Todd. There was no problem taking Crowe from his cell to the visiting room, but he later refused to return to his cell. Not having sufficient help to physically remove him, Hogg and Todd put him back in the visiting room with the doctor and then summoned Nicholson, who went to the area with five or six additional officers. Nicholson said that Crowe still refused to return to his cell. He could see that Crowe was agitated. He made sure that the visiting psychiatrist was safe and out of the room, and then told Crowe that he had fixed his cell up "nicely" for him. Crowe agreed to go.

Up to this point, I feel, Nicholson and the other officers had acted most professionally, and their handling of a difficult situation with a dangerous inmate could well be used as an example of proper procedure in a training syllabus and program.

At the door to his cell Crowe "went rigid and started screaming". The officers attempted to push Crowe into his cell and he fought back, apparently with great strength, attempting to jab at the officers' eyes and indeed biting C.O. 2 Peter Anson's hand. Once Crowe was in his cell, his rage was such that he began pounding on the cell and screaming. He even ripped an "un-tearable sheet" in half.

As mentioned at the outset, I consider that the force used by the correctional officers in this incident was both justified and not excessive in the circumstances.

As for inmate Lovering's allegation that Crowe was beaten regularly, a more acceptable version was given by another inmate, Leonard Dean Egypt. Egypt stated that for "three or four nights in a row Crowe would start screaming at about 10:00 p.m. and never stop until 2:00 a.m." It was his opinion that Crowe was not being abused and that the correctional staff were not in the cell with Crowe during that time.

## SECOND ALLEGATION

A reading of the 1B segregation log indicated Crowe's behavioural pattern while in segregation. The following were some of the entries: screaming, yelling, banging on the door, smashing his fist at the door's glass window, sitting on the bed and staring at the wall, flooding his cell, refusing to put his paper dishes out, being restless, violent, and threatening and throwing water out of the toilet.

It was quite obvious that this inmate should have been in a psychiatric facility rather than in a segregation cell designed primarily for punishment. Arrangements had been made to transfer him to the Penetang Mental Health Centre on January 2, 1974. This date was advanced to December 31, 1973.

Superintendent Whitehead, in his statement, said that he saw that the transfer out of the Toronto Jail could be "extremely dangerous". Commendably, he supervised the operation from "start to finish". His assessment of Crowe, based on "a fair amount of experience with violent people", was that he was "one of the most dangerous individuals I have ever encountered". He had similarly classified inmate Pirozzi (see Pirozzi Allegations). On the evidence, I accept both of these statements.

Also, to Mr. Whitehead's credit, he prepared for certain emergency measures. One was to make available a sufficient number of officers (six) under a senior officer (C.O. 5 John Moquin) to cope with any violence on the part of Crowe. Mr. Whitehead warned his officers that Crowe would undoubtedly attack them when the cell door was opened and "would most likely go for the eyes". Mr. Whitehead stated that this did in fact occur. Two officers had been detailed to go for each leg and one for each arm. Handcuffs and leg irons were applied. In addition, a blanket had been made ready and it was thrown over Crowe to control him. Another arrangement was for a nurse to obtain the jail doctor's permission to inject a tranquilizer intramuscularly if Crowe proved to be "extremely violent".

Despite these precautions, Mr. Whitehead said, the staff were "extremely hard pressed" to accomplish their allotted task, and injury was indeed sustained by some correctional officers. There is no doubt that "force" was used by the correctional staff on Crowe. But, equally, there is no doubt that it was necessary and that it was not excessive in the circumstances.

It is doubtful that a trained crisis intervention team could have been successful in quietening Crowe and explaining the advantage of the transfer to him on this occasion, as C.O. 5 Hugh Nicholson had been able to do on December 29. Mr. Whitehead's precautions would still have been justified, even if such a crisis intervention team had existed and had been available, for there is no guarantee that a "quietened" volatile inmate might not again erupt when out of his cell and while being transferred.

Another possibility is the adoption, as emergency jail equipment, of the plexiglass riot shields. It is recommended that, for the protection of correctional officers, these be included in the equipment available to correctional staff. They should be used only upon authorization by the senior officer on duty in the jail and under his personal supervision.

Finally, I return to a point made on the other occasions. The transfer of Crowe took place in the evening at a time when no doctor was present in the jail. For this reason, the intramuscular tranquilizer was administered to Crowe by a nurse. This caused no untoward problem, in this case. But it would have been preferable if a doctor had been on duty and had administered the injection. If a needle had broken or some other problem had arisen calling for medical judgment, a medical decision could have been made on the spot, without delay and with less likelihood of future criticism.

# The Adelson Allegations

## *Exhibits 566A-N*

Mark Asa Adelson was born in the United States in 1950. His documentation indicated that he was a deserter from the U.S. Army. According to a synopsis of his history and complaints, he had lived in Toronto and Hamilton. He worked as a car salesman and also lived on unemployment insurance and on welfare. As a result of a warrant, his apartment in Hamilton was searched, revealing dynamite, blasting caps, fuses, T.N.T., explosive chemicals, home-made bombs, rocks that detonated when dropped or thrown, literature on the manufacturing of explosives, and evidence of the sending of a letter bomb.

He had been sentenced in Hamilton, in October 1973, to 12 months for possession of explosives, and in March 1974 was deported to the United States. He had a history of psychiatric problems and could be described as a chronic complainer. Some of his complaints while in the Toronto Jail concerned overcrowding, insufficient pencils, food, telephone messages being refused, dirty bedding, shortage of cards and games, infrequent showers, and lack of medical facilities.

These complaints ranged from legitimate to unfounded. It must be borne in mind that a jail is not intended to be a hotel or recreation centre. Although the basic rules of cleanliness should be observed, the optimum cannot be expected in an ancient, overcrowded building. There must be some accommodation and adaptability on the part of inmates. Certainly, access to the

telephone and a sufficiency of games would help to occupy the time and minds of inmates, and to reduce their tension and hence the incidence of confrontations. Such matters are considered elsewhere in this report.

As for the medical facilities, I found the medical staff to be capable and conscientious. My criticism lies not in the quality of the medical services but in the fact that they were not available after four or five o'clock in the afternoon in an institution the size of the Toronto Jail, with its population in the 700s or 800s and the varied problems and tensions of its inmates. Round-the-clock medical staff is essential. As for nurses, there was ample evidence that there were not enough of them on the staff.

Probably a day did not go by in which inmates and correctional officers in the Toronto Jail could not find something to criticize. It is the same in a business office or a home. Does the chronic complainer, such as Adelson, with his gamut of complaints, provide material for a serious, continuing review of the jail's day-to-day problems? If so, this is a job for some permanent body such as the recommended Toronto Jail Council.

Adelson and his mother apparently wrote numerous letters of complaint to various officials in Canada. One letter of Adelson's, dated October 28, 1974, addressed to the then Minister of Correctional Services, Dr. R. T. Potter, was redirected to this Commission. Among other generalizations and charges, this letter contained two allegations of mistreatment by correctional staff at the Toronto Jail. The incidents allegedly occurred on December 7, 1973 and April 18, 1974.

## FIRST ALLEGATION

Adelson related that on December 7, 1973, he was "boisterously awakened" by an officer at 6:00 a.m. He thought breakfast was optional, he said, and considered the correctional officer "audacious". He asked the officer, "What is your rush?" He complained that his bed clothing was then pulled from his bunk, which prompted him to ask the name of the correctional officer. "I intended to report his irregular behaviour to a senior officer." He said that when the correctional officer refused to give his name, Adelson replied, "Never mind, I'll find out later." He said his shirt was then grabbed by this officer and he was "rapidly pushed" through the corridor and then "guided down three flights of metal stairs".

Adelson said he complained that a charge should be laid against the line officer for "attempted murder and assault as he might have severely injured me by his frenetic conduct". In the end, it was Adelson who apologized for his conduct, saying that he said what he did out of fright.

Adelson "identified" the correctional officer tentatively as C.O. 2 Samuel Curry. Attendance sheets showed Curry was not on duty at the time.



## SECOND ALLEGATION

This allegation appeared to have more substance than the first one and to have arisen from a more serious matter. Adelson related that he was out of his corridor, on April 18, 1974, on a visit with a lawyer. When he found that this lawyer was not interested in representing him, he returned to his corridor. Subsequently, he requested permission to telephone another lawyer. He said this was refused by the corridor officer, whom he identified as C.O. 2 Dwight Sleigh, on the grounds that the request should have been made earlier (apparently while Adelson was out of the corridor on the visit with the first lawyer.) Adelson said that he asked Sleigh to reconsider, because of the importance of the telephone call. He stated that Sleigh's reply was, "Any more requests from you and you'll see the lieutenant from the hole."

Later, Adelson made a similar request of one of the senior officers who was on his rounds. This officer said the request would be granted and Adelson apparently then told Sleigh of this decision. He alleged that Sleigh took him to a nearby broom closet where he completed the necessary request form and then punched Adelson three times in the stomach, advising him that if he ever again made another request he would wish he was never born.

Sleigh substantially confirmed the sequence of events, but denied striking the inmate. The number of other unconnected complaints about Sleigh's use of the broom closet for assaulting inmates makes it hard to accept his complete denial. I therefore find that there was unnecessary use of force in this instance.

As for requests, it is understandable that, generally speaking, these should be called for at a specific time, rather than being accepted sporadically. Nevertheless it is equally understandable that circumstances may arise which reasonably dictate that requests be received at other times as well. Requests for telephone calls to a solicitor should have high priority, assuming they are not merely a nuisance ploy.

## COMMENT

Adelson was undoubtedly a difficult and even aggravating type of inmate. Properly trained and experienced correctional officers require a high tolerance factor for dealing with such inmates. Ignoring some of the remarks or disruptive tactics of such inmates may be called for. If necessary, and upon proper grounds, charges may have to be laid. Certainly, punitive striking, pushing, kicking, or punching of such inmates is not justified.

Because of the complaining proclivities of inmates such as Adelson, investigation of their complaints should be fully made and documented as early as possible. Senior officers might do this on an internal basis. In addition, the justices of the peace might also be used where an independent investiga-

tion is indicated. Although this would be time-consuming for already busily engaged persons, it is preferable to clear up such complaints at the time when witnesses are available, rather than let them fester and grow. The Superintendent, the proposed Toronto Jail Council, and the Ministry's Area Officers should also be advised while such inmates are still in custody at the jail so that they can keep on top of matters. In this case, the passage of time made the evidence of some witnesses unavailable.

It is interesting to note Adelson's assessment of certain officers. Dassy – "It was popularly known that he was a violent person, there are other officers . . . who exceeded him in reputation." Nuttall – "There are some officers, such as a Mr. Nuttall, for whom a certain degree of respect is, I think, warranted."

# The Bass Allegations

## *Exhibits 567A-W*

James Edward Bass was born in Toronto in 1941. His complaints were received in writing from him while he was serving a sentence at the Collins Bay Penitentiary. His police record was about a page and a half in length beginning when he was 17 years of age. In the statement subsequently obtained from him, he indicated that during the period from 1958 to 1969 he was in the Toronto Jail "at least 10 to 15 times". He alleged that he was assaulted in 1958, early in 1969 (referred to as the second allegation) and on September 4, 1969.

## FIRST ALLEGATION

Bass related that he was in the Toronto Jail in 1958, as a first offender. He said that he was singled out for "horsing around" and was taken by a correctional officer to the "hole", where he was punched and kicked. He was left there until it was time to go to court, one hour later. At court he was released on probation. He was unable to identify the correctional officer involved, and, no further information being provided, it was not practical to investigate this complaint.

## SECOND ALLEGATION

Bass alleged that while he was in segregation on March 3, 1969, awaiting the Superintendent's hearing he was awakened at about midnight or early in the morning when two correctional officers entered his cell. He said he was punched and kicked in the face and his nose "swelled and bled". The next morning he reported this to the Superintendent, Mr. Whitehead, who, he alleged, passed the matter off with the remark, "So what."

Bass was able to identify only one of the officers who allegedly struck him. This correctional officer had died in the interval. Bass stated that he did not know why he was in segregation, but jail records indicated that he had yelled obscenities at a jail nurse and had attempted to "grab at" the nurse through the bars when the nurse twice refused Bass's demand for "a pill". No pills had been medically authorized.

Mr. Whitehead did not recall Bass making the complaint. However, he did recall Bass "very well", alleging he was "very aggressive" and a "trouble-maker each and every time he was in the jail". Mr. Whitehead stated that the correctional officer "identified" by Bass was in his sixties at the time and was in poor health. According to Mr. Whitehead, this officer would not have been in the corridors or working on the midnight shift. This complaint was, therefore, not proven.

## THIRD ALLEGATION

Bass's allegation with reference to September 4, 1969, was more serious and there was some outside documentation from Kingston Penitentiary indicating that more force than necessary might well have been used against Bass.

On September 4, Bass and about seven other inmates were taken to Corridor 10 in preparation for transfer to Kingston Penitentiary. While in that corridor they were given breakfast and then ordered to go to the shower room in the admissions area.

There was a conflict as to whether Bass was protesting that he was not given time to finish breakfast or was loudly announcing his refusal to be transferred. At any rate, sufficient correctional officers were called to forcibly move him from Corridor 10 to the shower area. There he was involved in another altercation during which he struck and injured C.O. 2 George Henry Carpenter, necessitating him to attend at surgery. Although he was not off work, Carpenter completed a medical injury report listing a "swelling to right side of jaw". Carpenter alleged that the only reason he did not charge Bass was that he was "already serving a heavy sentence".

As for Carpenter's assault on Bass, there was a conflict in the evidence. Bass alleged that Carpenter had assaulted him both in Corridor 10 and in the shower room. Against this was the evidence that Carpenter had the misfortune of being the nearest officer to Bass when "he went berserk".

According to Bass, when the escorting officers from Kingston arrived at

the Toronto Jail they at first refused to take Bass because of his injuries and informed the then senior officer present, Deputy Superintendent Alexander Gray, that Bass should be taken to hospital. Bass implied that Mr. Gray later convinced the Kingston officers that he should be included in the group of transferees.

Bass stated that at Kingston Penitentiary his injuries were noticed by the examining doctor. The medical report bore the following notation: "Beat up by Don guards – on 4th – contusions – both loins – (?) front of neck – rt elbow – face and nose – rt knee – left instep – claims blood in urine – light duty 2 weeks."

A front face photograph, taken on admission at Kingston Penitentiary, showed six areas of bruising.

I am of the opinion that it was necessary to use some force to move Bass, but the photographic and medical evidence from Kingston Penitentiary indicates that the force used was excessive. One cannot help but wonder whether some of it was punishment for Bass's assault on Carpenter and for his generally difficult behaviour.

There was one more matter for consideration and that was the return of Bass's personal belongings at the time of his transfer to Kingston. A dispute arose as to whether he brought a certain ring into the Toronto Jail on his admission. He alleged that, on transfer to Kingston, he was obliged to sign for the return of his personal effects at the Toronto Jail, prior to receiving them, and that after signing he noticed that a ring was missing. He said that he was told that he had never had a ring, and that when he insisted Mr. Gray entered with three or four officers. He said that Mr. Gray asked, "So you didn't get enough yet, eh?" and he was then further assaulted.

The personal property declaration form shows that a yellow ring, in addition to a watch and some cash, was deposited when Bass entered the Toronto Jail. This being so, Bass's complaint that he did not get the ring back was justified. Certainly an inmate should not be obliged to sign a receipt form before checking the contents of his personal effects envelope. It is recognized that inmates place greater than average importance to their few possessions. Other inmates do work in, and assist in, the admissions area, and there is a possibility that some objects may be lost, mislaid, or stolen. If there is a dispute, the matter is important enough that the senior officer on duty should be called to investigate. He should, of course, do so in an objective manner and not in a challenging way.

## COMMENT

In connection with the Pirozzi allegations, C.O. 5 Robert Nuttall acknowledged that disagreement over an inmate's possessions was a possible source of tension and trouble. A procedure that might well be studied in this regard is that employed at the Los Angeles Jail where 5,000 inmates go in and out



in a day. Clothing, on receipt, is washed or dry-cleaned on the premises and stamped with identifying numbers, visible only in ultraviolet light. There are also safeguard procedures for the receiving, storing, and returning of valuables.

At a seminar for volunteer workers in 1976, a number of them indicated that they would welcome the opportunity of assisting in the initial documentation and processing of inmates. Their interest was twofold: it would be an opportunity to meet and work with inmates at a much earlier time than is at present the case and it would mean a cushioning or softening of the first impact of the jail, particularly for first offenders.

I see other advantages, as long as there is mutual trust between correctional officers and volunteers and no interference with the correctional officer in his duties. The volunteer working so closely with correctional officers would have to be mature and well trained and would have to keep a low profile in order not to arouse resentment. A "crusading social worker" in the narrow sense of the phrase, wishing to do anything more than assist in documentation and obtain names for later use, would be resented. However, if volunteer workers limited their role as suggested, they could free some correctional officers for other duties. An inmate might well have a better rapport with someone who is not a correctional officer and this might lessen the tension in what has often been a problem area. It might be worth trying at the Toronto Jail. If so, consideration might be given to having it under the general control of the senior staff with over-all supervision by the proposed Toronto Jail Council and the Ministry.

In England, it has been found that taking correctional officers out of uniform and putting them in white laboratory coats in the admissions area has helped to lessen the impact on inmates of their first contact with the stark reality of jail confinement.

Had Bass turned his ring over to a civilian volunteer, who would have attended to its transfer to the jail vault, this part of the incident might not have taken place.

# The Belanger Allegation

## *Exhibits 568A-S and 659*

This matter came before the Commission by way of a letter dated April 3, 1975 from Gary M. Snider, solicitor for inmate Murray Charles Belanger. The letter referred to an allegation of Belanger, that on April 2 he was, without provocation, attacked by five correctional officers.

There is no doubt about how the matter first arose or that Belanger sustained some injury. However, there is a conflict in the evidence about what occurred in between.

Belanger and others from his dormitory (2 annex) were on a shower parade. Following the shower he and the other inmates were issued with clean clothing. According to his medical status summary he was 24 and his height was 5'1". He alleged that he was issued an extra large shirt. From this point on, there is a conflict in the evidence.

Belanger said he asked the issuing correctional officer (C.O. 2 James Loran) for a smaller shirt. "He said, 'We got no [deletion] small shirt.' I told him I was getting a visit and I don't want to go visiting with that shirt on. . . . Then he said, 'I'll [deletion] wear what he [deletion] gave me.' "

Belanger said that he then refused the shirt, after which Loran told him, "You take that [deletion] shirt and get up the [deletion] stairs."

Belanger said he was putting on the shirt when C.O. 2 Herbert Hogg came along and asked Loran what was "going on". Loran then said to Hogg, "This guy wants a small shirt and we haven't got any [deleted] small shirts. . . . The little [deleted] just don't understand that we don't have any small shirts."

Belanger said that Hogg told him to get upstairs and that he started to do

so and was up about two steps when Hogg grabbed him by the hair and pulled him down to the basement floor and “around a corner” where he was kicked and punched by Loran and Hogg. Then, he said, a “white shirt” came. This man was later identified as C.O. 4 Clement George Harrison. Belanger stated that he was on the floor at the time, blocking his face with his arms, and he expected Harrison to stop the fight. Instead, he said, Harrison, who was wearing “Hush Puppies”, stepped on his head, punched him a few times, and then told the two line officers that he had “had enough”.

If Belanger’s statement was correct, not only did two line officers unjustifiably assault him, but he was – more seriously, from the point of view of the offence – also assaulted by a senior officer.

The correctional officers’ version of what occurred was succinctly set out by Hogg in the shower log:

Inmate Murray Belanger “mouthing off” about his shirt being too big. No other small shirts available – stock at a minimum. Stated he would go to hole rather than wear it. Very abusive to Mr. Loran and myself. Given a strict warning when C.O. 4 Mr. Harrison arrived on scene. Mr. Loran and myself gave him a “break” and did not place this man on charge. A minor physical altercation occurred. I escorted Belanger back to AX2 – no complaints.

Once again we have a “we-they” confrontation. Belanger was supported by inmate Darryl Bryne Jones, who stated that he was following along behind Belanger as Belanger ascended the stairs from the basement. He said there was an officer on either side of Belanger and a senior officer following him. Suddenly, Hogg “reached up” and “grabbed” the front part of Belanger’s hair and “pulled his head back and dragged him down the stairs”. Jones indicated that this action was not in keeping with how he thought Hogg would act, from having known him for five months.

The version given by Loran, Hogg, and Harrison was that Belanger had been abusive about the shirt and that when he was going up the stairs “for no apparent reason” he suddenly swung around at Hogg and that Hogg’s move was a counter-action to Belanger’s original attempted attack.

Does the truth lie somewhere between the two stories? On the law of probabilities, by which we govern our everyday conduct, can one believe that, for no reason at all, Hogg suddenly reached out and grabbed the hair of the inmate ascending the stairs either ahead of or beside him, or, conversely, that for no reason at all Belanger in the presence of several correctional officers suddenly attacked Hogg? It is more likely that the action of one or the other was prompted by some remark. And reaction followed action. I am unable to reach a satisfactory conclusion one way or the other.

The net result, however, was that Belanger received some injury. C.O. 1 Edward Joseph Etienne noticed Belanger limping and in response to his inquiry Belanger showed him bruises and scratches to his left side and right shoulder.

Harry Abery, employed by the Legal Aid Department of the Law Society of Upper Canada, worked at the Toronto Jail part time as an appeals examiner and investigator. He stated that Belanger told him he had been attacked

by correctional officers in the shower area. Belanger showed Mr. Abery bruises on his arm and a long scratch on his rib cage. In addition, Mr. Abery felt "two hard lumps", one on each side of Belanger's neck.

Separate medical examinations by two Toronto Jail doctors, on April 2 and April 3, revealed a sprained ankle, a bad bruise of the lower chest, and abrasions to the shoulders and forearms. All because an inmate refused to wear a shirt that was too large for him when the jail admittedly did not have a sufficient stock of small-size ones.

The matter did not rest with an internal investigation; assault charges were laid against Hogg, Loran, and Harrison in the regular courts. After a trial, these charges were all dismissed by a Provincial Court Judge. The Provincial Court Judge had the advantage of having the parties before him and of hearing their evidence orally and seeing their demeanour. The onus of proof that would guide him in such criminal court would be that of any reasonable doubt being in favour of those charged. The onus applied in our Commission hearings was the civil one, of a balance of probabilities. To a lay person, this distinction might not appear significant, but it is present nonetheless. I have already indicated that I was unable to reach a satisfactory conclusion. This I regret, but I would rather acknowledge it than arrive at some artificial decision.

# The Chapman Allegations

## *Exhibits 582A-J and 582X and Y*

Robert Gerald Chapman wrote to the Commission on November 6, 1974, relating two incidents which he said occurred in “approximately June 1973”. Investigation revealed that the first incident occurred in July 1973. Only the first incident involved an assault complaint. The second is also recounted here as it has a bearing on duties of correctional officers and the use of segregation. A Misconduct Report dated the second allegation of Chapman (improper use of segregation) as being referable to August 5, 1973. At that time Chapman was 16 years of age.

## FIRST ALLEGATION

Chapman’s relating of the July 1973 incident had a ring of authenticity to it. I therefore reproduce the relevant part of his letter.

Nobody has made any threats or used any force to make me make this statement.



I am making it so that the truth will be known and I sign it because of its truthfulness.

Approximately June [and also July] 1973, I was in the new side of the Don Jail (4C).

One night, just before lights were to go out, I was sitting up reading. Our corridor was pretty noisy, but the guard hollered down "shut up". Everything was quiet. A few minutes later, an inmate started whistling. The guard walked past, in front of the cells, but the whistle had stopped, meaning it was a few cells down.

When the guard left, it started again and he came running back, looked at me and asked me my name, he then wrote it down. He yelled, "You shut your [deletion] mouth or I'll come in and drag you out of there." I told him I wasn't doing [deletion]. The next night the power lock opened all the cells. The guard yelled in, "O.K. in your cells." It was about an hour before [the] usual time. The same guard from the night before called me and said someone wanted to see me. He opened the two grilles to let me through. When I came out in the hall there was another big guard standing with the closet door opened. The guard behind me said, "Go in there and get a dust pan", so I walk in, just about to pick it up when he came in and kicked me on the floor up against a clothes bag.

He started booting, punching me and yelling, "You'll keep your mouth shut." He mostly punched me on the back of my head but I turned around and got one in the eye.

I can remember calling him a [deletion]. He said, "[deletion] eh?" and he picked up the dust pan and belted me a couple of times. When I went back to my cell, it was hard facing the inmates, as I had to fight back the tears. They all knew I had got a beating from the guard because in the morning a couple of inmates came in my cell and said, "They really gave it to you, eh?" I said, "Ya." I had bruises all over. My ribs were sore and I had a black eye. Later on in the day, an inmate came up to me and told me he was the one that was whistling and apologized.

I tried to avoid talking to the guards, if they talked to me I would say, yes, or no. Two days later, I went to court and told my mother how I got my black eye. I also told her I wanted the Judge to know, and that I didn't want to go back to the Don. But I was remanded and was back at the Don the same day.

Although Chapman later claimed to identify the principal officer involved as C.O. 2 Cyril Boakes and the second officer as C.O. 2 Randolph Ralph, I am not satisfied from the log records that these were in fact the officers responsible. Both denied knowledge of the event and in addition Ralph stated that it was not until about April of the following year (1974) that he began working with Boakes.

I am satisfied, however, that Chapman was assaulted without proper justification. In this I am supported by a medical report note of Dr. J. A. MacLennan, dated July 30, which read in part: "Complained of rt hip past few weeks, bruises left and right flank."

## SECOND ALLEGATION

On August 5, 1973, C.O. 2 Joseph Peake found Chapman fighting with another inmate in the corridor. By way of punishment he ordered them to scrub a floor. They refused and he told them that if they continued to refuse he would put them on charge. They said they understood this. He then put them on charge and they were taken to segregation.

August 5 was a Sunday. The following day was a civic holiday. The charge was heard on Tuesday, August 7, by the Superintendent, Mr. Whitehead. Chapman admitted his misconduct and indicated he wanted to apologize to Peake. I find nothing wrong in Peake's treatment of Chapman. It was his duty to prevent fighting among inmates.

After warning an inmate that he will be charged if he still refuses a proper order, a correctional officer must have the added sanction of segregation in order to ensure control and obedience.

Senior staff should be on the lookout for abuse, where whimsical orders are given solely to obtain refusal and then permit the charging of an inmate, and his segregation pending his hearing.

It is unfortunate that Chapman, aged 16, was kept in segregation for two days pending his hearing, rather than being isolated in some other corridor. With the overcrowded conditions in the Toronto Jail there may have been no choice.

As for the offence, Chapman indicated that he and the other inmate were practising boxing. The distinction might at times be a fine one, and certainly if there is any doubt, or the possibility of injury even in a "friendly" corridor fight, the correctional officer's duty is to stop it. Adequate recreational facilities would permit inmates to work off steam, even in a boxing ring with gloves, if supervised.

Chapman complained of being cold while in segregation and being refused toilet paper when he requested it of the officer presumably on duty. Inspections of the segregation areas should ensure that the temperature is the same as elsewhere in the jail. Toilet paper is not left with the segregated inmate lest toilets be blocked, but this was not the sole instance of such a complaint. Again, area inspection by senior staff should ensure that the punishment of segregation not be added to by line officers in this or any other way. Daily medical examinations, now routine, give an inmate another opportunity to voice any complaint of physical or mental abuse or harassment.

## The Coffey Allegations

### *Exhibits 583A-S and 583 X and Y*

Thomas Joseph Coffey was born in Toronto in December 1950. On November 19, 1974, he wrote to the Commission complaining of having been assaulted by correctional staff at the Toronto Jail on four occasions – December 1968, January 1969, October 1970, and November 1972. At the time of writing his letter, Coffey was serving a 10-year sentence for manslaughter. It was alleged that he had caused his father's death by means of a baseball bat. It may be that the correctional staff, hearing of this, did not treat him gently.

It is proposed to set out Coffey's allegations according to date. Some investigative problems were encountered because of the age of the allegations. Some persons who might have been able to assist were not available, having moved or left the Ministry. Some were ill and others had since died. If complaints had been made promptly or if there had been misconduct hearings, there would have been some record that might have helped to determine the validity of the allegations. Moreover, there were no medical records indicating any complaints or treatment that might have been referable to an assault. As a result, Coffey's allegations must be treated in a more general way than most of the other allegations by inmates.

## FIRST ALLEGATION

Coffey reported that while he was a "remand inmate" in December 1968 he was ordered to scrub the floor. He refused, he said, whereupon he was pushed down two flights of stairs and "beaten" by five officers, including C.O. 6 Colin James Dunbar who, at the time of giving oral evidence before the Commission in May 1975, held the post of Superintendent in another Ontario jail.

Coffey alleged a further assault when he was placed in segregation, but admitted that he made no complaint about injury, either as a result of the alleged push down the stairs or when being placed in segregation.

An allegation of unwarranted assault on the part of a correctional officer is, of course, a serious matter. It is even more serious if the correctional officer is not a line officer but a senior officer. Mr. Dunbar and the other available officers who were interviewed denied any knowledge of the incident.

There are certain aspects in this allegation that cast some doubt on Coffey's credibility. Firstly, he gave one corridor (3) in his letter and another (4) in his subsequent statement as the place where the incident arose. These are adjoining corridors and it is, of course, possible that there was some confusion over an event so many years earlier.

More importantly, however, he said that after his refusal to work an alarm button was sounded. This was most improbable in the circumstances. Also, Coffey related that the next day, when he was before the Superintendent, he was told that every inmate of the jail, whether on remand or not, was required to work eight hours a day. A remanded inmate may be ordered to clean his own cell and area, but is not put on general duties. This is the present policy and was the same in 1968. Elsewhere in this report, this matter is commented on.

## SECOND ALLEGATION

Coffey alleged that, in January 1969, as a punishment for having his shirt out and thus being improperly dressed, he was ordered to dust some cell bars. He refused to obey this order and, he alleged, was assaulted. He stated that a senior officer, C.O. 5 James Duncan, spoke to two other officers, C.O. 4 Stanley Johnson and an officer named Lee, and told them that Coffey had been "very insolent". Duncan was said to have added, "You know what to do with him."

This last statement, if it was made by Duncan, could have referred to placing Coffey on charge and putting him in segregation pending a hearing, rather than to anything sinister.

Coffey alleged that on the way to segregation he was punched in the stomach by Lee, and that when they arrived at segregation Lee held Coffey from behind while Johnson punched him several times in the face and stomach.

At the time of his interview Johnson was a C.O. 5, but at the time of this incident he was a C.O. 4. In his statement, Johnson said, "At no time did I deliberately assault this inmate, but when placing him in segregation only as much force as was necessary at the time was used."

Duncan denied any recollection of the incident. Lee had left the Ministry and could not be located. There was no supporting evidence of Coffey's allegations. Johnson's rebuttal was by way of a general denial. If it was correct, then excessive force was not used.

The difficulty of reviewing a complaint so long after the event, without the assistance of any supporting evidence, was clearly shown in this case. It is another reason for making the complaint procedure readily available, and known to inmates. An investigation may then be undertaken quickly, a decision given, and if necessary a review made. This would lessen any aura of suspicion that might arise at a later date.

### THIRD ALLEGATION

On his return from court one day in October 1970, Coffey related, he signed the "property book" with his proper name rather than with the alias under which he had been booked. Coffey said that he was told by C.O. 2 Victor Reynolds to wait in one of the search stalls and that he did so with another inmate, Gary Vincent Dineen (since deceased). Coffey stated that Reynolds returned later with about six additional officers who proceeded to "kick and beat" him and Dineen. He alleged that he was "barely conscious" when he was put in segregation and that Dineen was "beaten even worse". No reason was given by Coffey as to why Dineen was assaulted, let alone treated worse than he was.

At first, Coffey could identify only Reynolds. Later he identified C.O. 2 Douglas Bath and C.O. 2 (subsequently C.O. 4) James B. Brown as having participated. Reynolds, in his statement, said that he did not remember any specific dealings with Coffey. Bath, after being shown Coffey's photograph, said that he had never seen Coffey or "had any dealings with him". As for Brown, he did not commence employment at the Toronto Jail until the following year.

Coffey said that, the following week, he discussed this occurrence with a lawyer (since deceased) and with a police sergeant at the Toronto City Hall holding cells. Both of them, according to Coffey, advised him not to



lay any charges against the correctional staff.

In view of the death of Dineen and the lawyer, and the failure to identify the police sergeant, there was no way of testing this statement of Coffey's.

No doubt, at times, there is an inclination not to stir matters up, a tendency not to rock the boat. This is unfortunate. Any inmate who has a grievance, imagined or real, should not be dissuaded from having it aired. As stated earlier, there should be a readily available procedure and it should be made known to all inmates. It is far better to have a matter heard out at the time when witnesses are readily available, and when injuries, if there be any, can be examined, than to shelve it and allow it to fester over the years.

As for the allegation of assault, there was no supportive evidence. If an assault did occur, could it have been as severe as Coffey claimed? Was there the denial of medical service that he also alleged? The present procedure requiring the medical examination of an inmate at the time of segregation and daily thereafter, had it been in effect in 1970, would have created documentary evidence on such questions.

#### FOURTH ALLEGATION

Coffey was transferred from the old part of the jail to the new on November 11, 1972. He claimed that while still in the old section he was "insulted" by C.O. 2 Thomas Turnbull, but he admitted to "returning the insult". He said he was then "threatened" by Turnbull. He indicated that he was pushed along the tunnel to the new building. He also claimed that, when he was in the elevator in the new building, the elevator was stopped between floors and his head was banged three times against the wall. In his letter, he named Turnbull as one of the officers involved. Later he identified C.O. 2 William Stafford as having been present in the elevator. Coffey stated that he told these officers that if they hurt him he would have his lawyer charge them. According to Coffey, they then stopped harassing him and Turnbull said, "Well, you don't talk to the officers like that."

Coffey said that when they reached 1 landing in the new building Stafford said to the landing officer, who was in charge of 1B segregation, "This is a mouthy little [deletion]." The landing officer then suggested that Coffey be taken into the segregation area to be "straightened out". Coffey credited Turnbull with rejecting this proposal and having him admitted to the regular corridor (1C).

Turnbull, in his statement, agreed that he placed Coffey in 1C but stated that it was without incident and that Coffey was not assaulted or insulted by him or by any other officer.

Stafford denied any recollection of the episode, although the 1C log indicated that he, Turnbull, and a third officer escorted Coffey to 1C. Coffey identified C.O. 2 Leslie Herbert Mayne as the third officer, but the records indicated that he was off duty at the time.

Once again there was no medical record referable to the matter, or any record of a complaint being made. Indeed, Coffey did not allege that he suffered any injury of consequence. His statement about the elevator was to the effect that if he was hurt, he would lay charges. None were laid. There were other instances of inmates alleging that the elevator was stopped and that they were then assaulted. I believe that this has, unfortunately, happened. Father Ernest Paul Callahan's evidence would seem to support this conclusion. The practice cannot be deprecated too strongly, but whether it occurred here is difficult to say.

Concerning the "exchanging of insults", there ran through the four allegations Coffey's apparent difficulty in getting along with correctional staff. Whether the fault lay with Coffey or with the staff, or with both, would depend on an assessment of each incident. Certainly, his rejection of authority and his refusal to obey orders must have been a strong contributing cause.

His being pushed along the tunnel also was not of a serious nature, and although, as mentioned elsewhere, correctional staff should as a general rule refrain from placing their hands on inmates, how different is a push to move a recalcitrant inmate along from a lawful come-along hold! A push may be the less physical of the two. Neither should be resorted to except where necessary, and then only in a non-abusive manner.

# The Conrad Allegations

## *Exhibits 584A-J and 584 X and Y*

Truman Leroy Conrad wrote to the Commission complaining of an assault on January 1, 1974, after he had made an unsuccessful attempt to escape.

In his letter, Conrad also complained of not receiving an “ulcer diet” and of inconsistency in the medication he received from the medical staff. These matters are covered, in a general way at least, elsewhere in this report.

Conrad was born in Halifax in 1942 and had a two-page police record dating from 1958. Most of his convictions were for theft and related matters. He had twice escaped from custody prior to his escape from the Toronto Jail on January 1, 1974, which lasted approximately two hours. He injured his heel in a 30-foot drop and this no doubt restricted his ability to travel.

When Conrad was returned to the jail, he complained of having to walk unassisted to the segregation cells, and he alleged that while doing so he was punched in the kidney by an unknown correctional officer. He further stated that he was pushed into a cell and then slapped and punched. He said he was told that a few more bruises added to the injury he sustained in his escape attempt “wouldn’t matter”.

The correctional officers who were present in the segregation area at the relevant times were interviewed and all denied using force on Conrad. The medical records set out the heel injury but did not refer to any other complaint.

Escapes are treated very seriously by jails for many reasons, not the least of which is the reflection on the staff’s attention to security duties. Indeed, the “Boyd gang” escapes from the Toronto Jail in 1951-2 became the subject

of a separate Royal Commission inquiry under His Honour Judge Ian Macdonell. In England, Earl Mountbatten in 1967 presided over an inquiry "into recent prison escapes".

It may well be, therefore, that "returnee escapers" are questioned closely about their means of escape, and not handled in the gentlest manner. There was, however, nothing to support Conrad's claim of an assault. Because of the criminal nature of the offence, the escape was dealt with in the regular courts and there was no internal misconduct hearing.

# The Denton Allegation

## *Exhibits 585A-G*

This allegation arose, not by reason of any complaint by John Falcho Hyde Denton himself, but as a result of information provided by a fellow inmate, Michael Judge.

According to Judge, C.O. 2 Dwight Sleigh and another correctional officer (unidentified) ordered Denton out of Corridor 3 for clean-up duties, some time in the three or four weeks prior to November 21, 1974. The Corridor 3 log indicated that Sleigh was on duty on the 3:00 p.m. to 11:00 p.m. shift on October 27, 28, and 29, and that there was a clean-up period between 8:00 and 9:00 p.m. Further, on October 29 at 8:30 p.m., the following notation was made by Sleigh: "Inmates identified and secured in cells because of noise and fooling around."

Judge related that Denton was angry and that while he was cleaning up his mop "somehow" slipped out of his hand and struck Sleigh on the shoulder. Sleigh was alleged to have taken Denton to the 1 and 2 landing broom closet. Sleigh and the other correctional officer, according to Judge, were hitting Denton on the way to the landing, and when Denton returned about five minutes later he was crying.

Sleigh's story was that, after he was struck by Denton's mop, Denton apologized, saying it was an accident, but that the episode was repeated and that Sleigh was struck a second time. Sleigh related that the inmates in the corridor were watching and laughing. He then told Denton to go down to the 1 and 2 landing and get a scrub brush and to scrub the rotunda. When Denton kept refusing to obey this order, Sleigh took him by the arm and



escorted him to the rotunda. Sleigh said that, as Denton was about to start scrubbing, a senior officer arrived and Denton began to cry. Sleigh stated that Denton told the "white shirt" that he was at fault and apologized to Sleigh, after which he was returned to his corridor.

Several attempts were made to interview Denton for his version of what occurred. We was unco-operative about giving any statement and finally said he had no complaint about his treatment at the Toronto Jail. On one occasion he said he was not interested in being interviewed because he "just might be back" in the Toronto Jail and would not wish to be punished for giving an interview.

Denton was born in Jamaica and at the time of the alleged occurrence was 17 years of age. His reluctance might indicate that he did not contest Sleigh's denial, but Sleigh had been accused of using the broom closet for assaults on other inmates. That, together with Sleigh's admission that Denton complained to a senior officer and was crying, certainly left a strong suspicion that similar tactics were adopted here. Certainly, Sleigh would be upset over being struck once or twice by Denton, particularly in the presence of other inmates. The proper procedure would have been to place Denton on charge or to report him to a senior officer and obtain concurrence in making Denton scrub the rotunda as punishment. However, if Sleigh intended to exact summary punishment himself by striking Denton in the confines of the broom closet, the act would constitute excessive and unnecessary use of force by Sleigh.

Without a doubt, Denton's action was wrong and called for some type of punishment, particularly if it occurred in front of other inmates, thereby undermining Sleigh's authority. Sleigh may have thought he was being easy on Denton by using the broom closet rather than putting him on charge. But this was contrary to jail rules and Ministry directives. Even if one were to accept Sleigh's claim that all he did was make Denton scrub the rotunda, Sleigh was wrong in not having such punishment first concurred in by a senior officer. There should have been some type of hearing, in which both Denton and Sleigh could have been heard.

# The Shand Allegation

*Exhibits 586A-G and 586 X and Y*

On November 9, 1974, Michael Judge wrote to the Commission about an alleged assault on a fellow inmate, John Albert Shand, aged 16. Aside from the question of the reliability of the facts related, the letter was of interest for the opinions it revealed:

November 9th, 1974

Dear Sir or Madam,

I am writing this letter with regards to brutality in the Toronto Jail. I personally witnessed a guard beating an inmate in the broom closet, in late October 1974. This inmate, named Albert SHAND, was too scared to step up and make these allegations himself. The Doctor, here in the Toronto Jail, witnessed this brutality and failed to make a report on it. It is my submission that in order to avoid any more such beatings in the Toronto Jail, we would need a complete change of Staff, as the guards are becoming more violent, whereas today's inmates are a lot more peaceful and understanding than the inmates of one hundred years ago, when this place first opened. These guards seemed to be constantly living in the days of the rough house inmate and are taking their hostility out on today's inmates. What we need are guards who don't bring their family quarrels to work with them, as the inmate is always used as an escape goat for these family quarrels. The only argument I have on behalf of the guards, is that they are over worked, especially when you have a guard who has worked two or three shifts in a row, he is bound to be tired and hostile.

Sincerely your,

Mike JUDGE

Shand and C.O. 2 Joseph Robert Peake were interviewed separately, as was the "doctor", who in fact was a male nurse, Joseph Lauwers. In addition, Judge was interviewed and a statement obtained from him which coincided factually with his letter.

The statements of Shand and Peake were substantially the same, both alleging that Judge's complaint about an assault was in error and misunderstood. Shand and Peake related that Shand was indeed called into the broom closet by Peake but that, rather than being assaulted by Peake, Shand was told to clap his hands "real hard" and make sounds "as if he were being punched". Shand said he did so. He further stated that, as he walked out of the broom closet, Peake said in a loud voice, intended to be heard by the other inmates, "Now do what you are told and that goes for the rest of you guys." Shand said he was further told by Peake that he was to tell an inmate by the name of Curry that the same thing would happen to him if he did not stop "mouthing off".

At the time the statement was taken from Shand he was an inmate in the Chatham County Jail. There was, therefore, less likelihood of the statement being influenced than if he had been an inmate at the Toronto Jail where he might have been in contact with and under the influence of Peake.

Judge, in his statement subsequent to his letter, identified Lauwers and also said that, as a result of something he (Judge) said, Lauwers opened the closet door. Lauwers' reply was that on no occasion had he ever opened that door *and* witnessed an inmate being beaten.

Peake explained his actions as follows:

I was having some problems with some of the inmates at the time and it is a favourite trick to ask one of the inmates to clap his hands out of sight of the other inmates and make other noises so that they will come in line and it usually works in that they usually quieten down and I have no more problems.

In view of Peake's explanation, corroborated by Shand's independent statement and added to by Lauwers' denial, one must conclude that Judge was mistaken as to this assault allegation. There may have been some rationalization and "jumping to conclusion" on his part. As for Lauwers, when he gave evidence orally on another occasion I found him to be a credible witness.

If, however, Lauwers was the person who opened the closet door, as was alleged by Judge in his statement, then I accept Lauwers' assertion that he saw no assault.

With reference to the opinion Judge expressed in his letter that "today's inmates are a lot more peaceful and understanding than the inmates of one hundred years ago", the comparison bridges too long a gap for this Commission to comment. Certainly, the evidence before the Commission was that, in recent years, inmates had become progressively more troublesome and difficult. They might have been better educated, but in the overcrowded milieu of the Toronto Jail they were not more peaceful or understanding than they were formerly. Certainly, they reflected the less disciplined society outside.

I agree with Judge's observation that the correctional officer is overworked and that, if tired, he is apt to be more "hostile", or at least more tense, and with lowered resistance to any inmate aggression.

I disagree with Judge's drastic suggestion of "a complete change of staff". Undoubtedly, there should be some reallocations, better control by senior staff, and improvements in selection and training. These matters are discussed elsewhere in this report. They are mentioned here briefly in answer to Judge's letter, which not only reflected his general opinion but may also have been an indication of how he viewed the Shand incident.

# The Crossman Allegation

## *Exhibits 587A-P and 587X and Y*

Robert John Crossman complained about his treatment by the correctional staff at the Toronto Jail on May 25, 1973, between 3:00 and 6:00 p.m. In some ways there was a similarity to the Blue Goose episode, dealt with in detail elsewhere in this report.

Crossman was born in Ontario in 1954. His criminal record began when he was 17 and included a number of assault charges. When he wrote to the Commission in November 1974, he was serving a sentence for robbery with violence. His letter, similar to ones received from some other inmates, was revealing not only as to his complaint but also as to his personality and the scars prison life had wrought upon it.

The purpose of quoting excerpts from the letter (with some but not total emending of spelling and grammar) is to reveal the thoughts of inmates as well as their reaction to their surroundings, and not merely for the purpose of passing judgment on whether Crossman was the author of his own misfortune. How better to do this than to use the language of the inmate himself? The excerpts refer not only to the allegation of assault, but also to more general matters.

November 14, 1974

To Whom it May Concern:

I as a convict, inmate, resident, animal or whatever names you put on me, am taking time to write . . . I was in the Don Jail last May or June [1973] with 13 other so called ringleaders of Millbrook Riot, Disturbance, Sit down,



or whatever name you want to put on that.

By the way, 8 as far as I know are back in jail. Anyways I was shipped to the Don Jail, handcuffed in threes. We arrived and waited in a small room, where we waited till three at a time were taken out of the room to a stable like atmosphere with stalls.

Here I watched my partner get slapped around and a guy from Kingston too. Just before I got slapped around too . . . Well anyways we were stripped and questioned here, getting slapped in the back of the head, punched, kicked in the kidneys and stomach, any place but in the face where it is more noticeable. There were 2 guards on each of us, we didn't resist because we know they could beat us to a pulp and cover it up with other guards.

Besides that I was scared stiff after being involved in a disturbance and the sad faces on the way to the Don. The sad faces were people who have been there before or heard about the Don. I was told about a guy that was beaten and shipped out to Mimico where he died. If this was just jail talk it still put a fear in me of the Don. Anyways we were taken, one at a time out of the stall room forcibly . . . I wasn't noticing very well who was who, I was just thinking and hoping of getting to the hole or to a cell to be left alone. It was like a nightmare to me. The real fear hasn't come yet, I was now punched, kicked, hair pulled and shoved down the hall by three guards. We stopped at an elevator. I was asked if I wanted to go for an elevator ride. They laughed and I was shoved up the stairway, by the time we reached the next floor the elevator was there. Full of what is called the "goon squad". I didn't have time to count how many "goons" were in there because I was thrown in and bounced off a fat guard then I hear, "So you want to hit a fellow guard eh! Ha! Ha!" They kicked and bounced me around the elevator . . . this elevator was stopped between floors for what seems to me like hours. Anyways still no marks on the face or blood shown. I was shoved down another hall to a place outside the hole where I was stripped and punched, then thrown in a cell with no bed just baby dolls on. It was cold. I crawled in a corner to keep warm. I never went to sleep the first night because I was waiting to get another beating and it just wasn't going to happen when I'm sleeping if I could help it. I made sure I was always standing up when the guard checked because they could come in any time. . . . I remember one day in there, it was the guy from Kingston's birthday. I gave him my tea for a present. Happy Birthday! Ha! Five days was up and we got moved to different corridors out in the population. We were greeted by people saying how big the grapevine talk is about us getting our lumps. All the time I was there I saw the Don Jail as one big time-bomb with the tension that exists.

Never in my life have I seen a place so tensed waiting to jump down someone's back or get jumped on . . .

I was in the Don for 18 days then shipped out to Brockville County where I stayed for four months and made Ontario parole. I was only out 3 months before I created a violence offence. Four counts of robbery with violence.

This beating in the Don, along with any beating, all it causes is bitterness and hate feelings. Within me, it did anyways and seeing how I got to control these feelings in a controlled environment. When do I release them. Well of course when I'm out of a controlled environment on people I don't even

know . . .

I got to hate every cop or guard up till now! The reason that has changed is because I'm at a place [Ontario Correctional Institute, Brampton] where people have to show feelings, staff and residents, staff has to trust residents and vice versa.

I'm in a place where you can reason things out, not a place where they can't express their feelings in words, can only express them in violence, the only way they can get their point across. They don't even want to try because they take the easy way out by beating people.

In the place I'm at now we are not beat, fed and put to bed. We are not stripped of all responsibilities, respect, dignity and not even in one suit of clothes the same as the guy beside me.

We are treated like human beings, not like a mass of convicts, but treated by individual needs. Because every human being is different and should be treated different . . .

How long is it before you treat human beings like human beings. I mean sure we got a lot of problems brought on from years. But it's what's on the inside, it's not our outside features that got us here. Anybody can take a beating and become more bitter and control it in a controlled environment but where does it go once we're out??

We are in here for not having self respect or respect for others.

Why do you take all the self respect we have left? . . . Show us respect, care, love, trust, understanding and your feelings. When we get out we can show you respect, care, love, understanding and our feelings.

As long as violence, beatings, and hate exist, that is what you get in return.

Take a look in jail and you will see you got every kind of person and type of person that is on your street. The only difference is that we are losing respect, care, love, understanding what little we have. Are you correcting people? Or breeding animals? Let's get more places like O.C.I. Let the public know there is hope, and let's get motivated.

Respectfully yours

#434 Robert J. Crossman

P.S. Thanks for listening anyways. Then again a lot of people do listen but that's all.

Crossman's general observations are, for the most part, considered in other parts of this report. The balance of this account will deal with the incident itself.

As with other inmates who wrote letters, Crossman was interviewed by Commission investigators and a further statement was obtained. In that statement, as well as in a section of his letter that has not been quoted, Crossman mentioned that while in the search cubicle, which he referred to as a stable-like stall, he was struck by a senior officer, whose name he believed to be Russell, for not addressing him as "sir".

According to Crossman, he was punched in the stomach, slapped around in the cubicle, and hit on the back of the head and shoulders, with the admonition, "You don't call the Peterborough guards 'sir' and you don't call

Millbrook guards 'sir', but you're going to call the guards here 'sir'. Is that understood - 'sir'."

Crossman described Russell as a man in his fifties, about 5'5" or 5'6", with white hair and glasses. This description fitted Assistant Superintendent John Russell, and, accordingly, Mr. Russell was interviewed.

In his statement, Mr. Russell related that he was responsible for jail security at the time. He had prior information that a number of inmates, "trouble-makers [who] had caused a riot in Millbrook", were being transferred to the Toronto Jail. Millbrook is a maximum security provincial correctional centre. Mr. Russell said he was in the admitting area when these inmates arrived. He stated: "Everything proceeded in an orderly fashion and I remained in the admitting area for about five minutes and left. . . . The searchers were in the admitting area and there were other supervisory personnel there, so I had no reason to stay in the area long and I left."

He went on to relate that he accompanied the Superintendent of the Millbrook Correctional Centre, Ernest Bond, to the various segregation areas in the Toronto Jail when he was trying his ex-inmates on the various charges facing them. These were, destroying government property, conspiring to cause a disturbance, and giving counsel to another inmate to act in contravention of "the Act".

Mr. Russell denied that he used any force or witnessed any being used. Mr. Carter, in his submissions with reference to Crossman's allegation, argued that "it is improbable that such an official would assault an inmate". Having observed Mr. Russell throughout many days in the hearing room, and having heard him giving evidence in his quiet manner on two occasions, I would agree that it is highly unlikely that he was the officer who struck Crossman, if Crossman was struck as alleged. Crossman was unable to identify any other correctional officer in the incident, which occurred approximately one and a half years before he wrote his letter. There was, therefore, validity in Mr. Carter's argument that Mr. Russell might have been mentioned by Crossman because he was present during his admission and also because, over a period of time, Mr. Russell's face and name would have become familiar to Crossman. I therefore make no adverse finding against Mr. Russell.

I now come to Crossman's allegation of assault while on the elevator and the complaint that the elevator was stopped between floors and the further allegation that there was an assault while he was donning the "baby dolls". The segregation log indicated that Crossman was signed in by two senior officers, C.O. 5 Stanley Johnson and C.O. 5 Donald McKay. Complaints of assault were made against Johnson by nine inmates and against McKay by four inmates during the Commission hearings. Of course, each incident must be separately studied. In this case, both these officers denied any knowledge of the alleged assault. Indeed all correctional staff interviewed in the Crossman matter denied any involvement.

Allegations such as these have been made often enough by other inmates to raise the suspicion either that this tactic was used by correctional officers or that the story, having been repeated over and over by some inmates, was used by others, validly or not, when they wanted to indict members of the

correctional staff. The conclusion that I have come to is that there has been both truth and fiction in allegations of this sort. One must look at each individual incident and appraise the reliability of the complaint. The solution must lie in having mature, responsible, and well trained senior officers accompany line officers who are engaged in escorting inmates to segregation.

Mr. Carter submitted, with logic, that Crossman had opportunities to complain of any assault and did not. He further drew attention to the fact that none of the other transferees who Crossman stated were maltreated, complained either at that time or later.

One more matter of note is that the medical examination report of May 27 (two days later) contained no indication of any complaint or injury. In his interview statement Crossman said that the reason he answered "no" to the doctor's routine inquiry about any injuries sustained after his admission was that correctional officers were present.

Although this may have been Crossman's reason, on the balance of probabilities one would have thought that, if he was mistreated in the manner he alleged and had a strong sense of injustice, he would have spoken up whether correctional officers were present or not. However, since similar statements were made by other inmates, it is suggested that medical examinations should be held in the absence of correctional staff, unless there is a specific reason to the contrary. For the safety of the medical staff it may be necessary at times for a correctional officer to be nearby or even to keep an inmate under surveillance during a medical examination. But even then there could be a closed door with a glass section to permit observation while protecting the confidentiality of information between doctor and patient-inmate.

Crossman alleged that at the time of his medical examination there were "lumps" on his head "where the hair was pulled out" and bruises on his back. The examining doctor, Dr. O. B. Dickinson, gave oral evidence on other occasions before the Commission and impressed the Commission as a fair and impartial witness with considerable medical experience. Assuming that Crossman was at least stripped to the waist it is difficult to understand why a recent injury should not have been noticed by Dr. Dickinson, if it existed. I must therefore conclude that Crossman's allegation has not been sufficiently proven.

## COMMENT

One of the tasks of the Commission was to make recommendations within our terms of reference to improve systems and procedures. These were often made right away rather than being saved for the final report. At times it was not necessary to make suggestions specifically, as the weakness of a procedure or the way to improve it became self-evident during the hearings. I am pleased that one of the changes that was adopted was the daily medical



examination of all persons in segregation, as well as their physical both before and after being placed in segregation. Had this been in effect in May 1973 there would have been less doubt whether there had been physical injury in an episode such as the one related by Crossman. In addition, the inmate would have had additional opportunities to complain, if he so desired.

The transfer of the Millbrook group is a reminder of one of the duties that fall on the staff of the Toronto Jail, namely, to look after the housing of inmates who have proven too difficult for other institutions. This involves their induction and documentation at the Toronto Jail at times when many of them are in a tense, resentful, and aggressive mood by reason of whatever occurred in the other institution and by reason of their forced transfer. Both the inmates and the correctional officers are aware of the initial confrontation in the admission area of the Toronto Jail, and each is no doubt looking for an opportunity to establish supremacy. In such conditions, and particularly when the transfer involves not one or two but a larger number of inmates, is it any wonder that there is an electrifying atmosphere in which action and counteraction are easily sparked? Having been alerted, the Toronto Jail marshals as many correctional officers as it thinks necessary to control the situation. This can entail working some officers beyond their normal shifts, with the hazard of having the more tired and therefore less patient correctional officers dealing with the more tense and less co-operative inmates.

It has been recommended, therefore, that the use of the Toronto Jail as a staging area be eliminated and the transfer be made direct to the designated institution. Further, in any event, it has been recommended that the numbers transferred at any one time be kept as low as possible.

As for the efficacy of requiring inmates to address correctional officers as "sir", most of the correctional staff who were questioned about this believed that it was unnecessary. Certainly, the green blazers and grey flannels are less formal than the former officers' uniform. When the uniform disappeared in Ontario jails and correctional centres, and the military ranks were replaced by the C.O. grades, a less rigid relationship began to develop between senior and line officers, and this carried over to inmates. In the older and more disciplined society of the United Kingdom, the uniform is still worn by prison officers other than the governor and his deputies and assistants and those engaged in training programs. One noted, when visiting the jails and remand centres there, that line officers would often stand at attention when a senior officer approached and would address him as "sir". In Ontario, unless the line officer conforms to this type of formal and military respect, he cannot complain if the inmates do not follow suit. One thing in favour of such formality is that it often makes for smarter appearing officers and inmates. Also it might make compliance with orders easier and more automatic. A slovenly appearing officer or inmate in a "lounging around attitude" is slower to respond. His reflexes seem to be geared to the atmosphere. Add to this the dreariness of the surroundings, and at times downright uncleanness, and one should not be surprised at the apathetic despondency that seems to descend like a pall over some jails and prisons. I have noticed this at times on some corridors in the Toronto Jail.



The problem is not such a simple one that the use of "sir", a can of paint, a scrubbing brush, or pressed trousers, be they flannels or "blues", can solve. But the absence of all of these, or even their diminishing use, can affect the relationship between correctional officers and inmates.

As for the use of "sir," it is a term of respect used without harm in other areas of society than just the military. Anything in the extreme, even good customs rigidly enforced, may cause more harm than good. Some members of our prison population tend to look upon the use of the term "sir" as degradingly subservient. If this is their attitude, does it accomplish any useful purpose to force compliance? Would it not, under such circumstances, be preferable for the correctional officer to win respect by providing an example of proper conduct and fair treatment of the inmate?

It was noted with some witnesses, both officer and inmate, that the word "sir" came out almost automatically when answering counsel's questions. With others it was non-existent. Yet neither counsel nor the Commission ever made an issue of the matter. It would be wrong to attach too much importance to a point such as this, but, if one were to generalize, it seemed that the witnesses who used "sir", did, for the most part, answer questions more clearly and with less hesitation than those who did not. There were exceptions over the long haul of the inquiry, but this observation may be a point in support of the correctional officers who see some advantage in this form of address.

It may seem that the use of "sir" has been expounded too lengthily. True, in the over-all scheme of things, it is a small matter. But a small matter is often enlarged or aggravated within the confines of a jail, particularly when one side or the other has strong opinions about it. For, otherwise, how could one explain the large number of complaints, allegations of assaults, and at times resulting incidents which ended in segregation, all as a result of the non-use of the one word, "sir".

Whatever stand is taken on this matter it should be uniform throughout the jail. The Superintendent should make a decision one way or the other and should decide whether it is to be obligatory or optional.

# The Douglas and Watson Allegations

## *Exhibits 588A-S*

Eric Byron Douglas was born in Jamaica in 1954. He came to Toronto at the age of 14 and three years later began his criminal career, which included two weapons offences, some “theft under” charges, and a sexual offence.

He was interviewed by the Commission investigators as a possible witness in another matter, and during the interview he alleged that on three separate occasions when he was in the Toronto Jail he was assaulted by correctional officers. On a fourth occasion, he said, there was a fight between himself and another inmate, Michael Anthony Watson, as a result of which, he inferred, Watson was assaulted by C.O.2 Joseph Robert Peake. Watson, in a separate statement, confirmed Douglas’s allegation that he (Watson) was assaulted.

Watson was a witness in the Frost allegation, but he made no reference then while giving evidence to any assault upon himself, and it was not relevant at the time to ask him such a question.

The three incidents in which Douglas claimed he was a victim were in October 1972, in May 1974, and on September 21 or 28, 1974. The alleged assault on Watson, according to a Misconduct Report, was on May 12, 1974.

## FIRST DOUGLAS ALLEGATION

Douglas alleged that there was some rowdyism in Corridor 9 one day in October 1972. As a result, he and another inmate, Donny Douglas (not re-

lated) were called out of the corridor. He claimed that it was a correctional officer named (C.O.1 Geoffrey) Green who had called both Douglasses out. The two inmates were then caught talking and laughing, and Eric Byron Douglas alleged that Green banged his head against the wall a couple of times. Douglas then got in an argument with Green and was taken to one of the closets. Douglas alleged that Green took him by the face, "pinching my cheeks and forcing my head back. I put my hand up to push his hand away. He shoved me backwards." Douglas stated that he fell on some buckets and Green then kicked him three or four times. Later, he said, Green ordered him and the other Douglas to sweep, scrub, and mop the corridor. When they were finished, Green "kicked the bucket of water all over the floor and told us to do it over again".

Eric Douglas related that his namesake said he was not going to do it over again, and was then sent to the "hole" for the night. Although Eric Douglas had indicated that he would not re-do the floor, he in fact did so after he saw the other inmate go to segregation. When he had completed this task he was returned to his cell, "and I didn't have any more trouble with Green". Presumably Green, likewise, had no more trouble with Eric Douglas who, from his own admission elsewhere, was unco-operative and failed to comply with what started out as reasonable and simple directives. The situation deteriorated when the two inmates became somewhat insolent and started mocking the correctional officer, or at least testing him. This, of course, does not excuse Green's kicking over of the bucket after the cleaning had been done. From evidence elsewhere, it appears that this was a ploy adopted by some officers at times. One can well imagine the resentment of some inmates, causing them to "blow up".

This tactic is a form of harassment of inmates which is as much a game as some of the games played to bait the correctional staff. It should be discouraged, as it does not help correctional officer/inmate relations. If an inmate does wrong, he should be disciplined in a more positive way. It is understandable that Green may have wished to stop short of putting the two inmates on charge and into segregation. As it developed, Donny Douglas ended up in segregation anyway. Would not the original sweeping, scrubbing, and mopping have accomplished the desired purpose? If scrubbing a floor was a cleaning duty, then, of course, it was within the purview of a line officer to order it. If it was intended as a punishment, then it might be considered as something for which a senior officer's permission should be required. *A fortiori*, this should be so with reference to any "rescrubbing".

Green was not interviewed. At the time of investigation, he had left the Ministry and returned to the United Kingdom. Therefore, the observations that have been made may not be appropriate to this particular case. They are, however, valid as general observations on a type of conduct on the part of staff. As for the alleged assaults, the medical treatment chart of Eric Douglas for October and November 1972 showed some entries but none referable to the allegation. In both this first allegation and the ensuing one,

there are suspicions of the use of unnecessary force. The evidence is not sufficient, however, to make a definitive finding.

## SECOND DOUGLAS ALLEGATION

Douglas said he had completed all but 30 days of a term of imprisonment at Millbrook when he was sent to the Toronto Jail in May 1974 to serve the balance. He apparently resented being questioned upon admission, contending that the staff at the Toronto Jail already knew him, because he had been in the Toronto Jail prior to being sent to Millbrook. He related that he also said that the Toronto Jail had his files from "the Brook" (Millbrook Correctional Centre). He stated that a line correctional officer and a "white shirt" were present at the time. He alleged that the "white shirt" took him by the throat, lifted him up, and banged his head against the wall. Then, he alleged, he went to the floor, where he was booted in the stomach. He was picked up by the scruff of the neck and told to "get the [deletion] out of here". On his way out, he said, he was called back by the "white shirt" who said he would deal with him personally if he caused any further trouble.

Douglas's actions and his attitude on admission were obviously wrong. The "white shirt" was identified as C.O.4 Arthur James Kennedy. Kennedy said he had no recollection of any dealings with Douglas, at any time, for any reason. Whoever the senior officer was, there undoubtedly had been provocation. However, this did not justify the assault, if such did occur. There was no corroboration, medical or otherwise, of Douglas's claim.

The incident was therefore something that could have happened in any institution. The use of specially trained officers with "low boiling-points", the wearing by staff of white laboratory coats, the use of volunteer workers, more frequent rest breaks for officers working in the admissions area, and the elimination of overtime for these officers are some of the most obvious recommendations.

In a jail in England, we were rather impressed with the casual, low-keyed approach of staff in Admissions. Obviously, this helped to reduce the number of incidents. The staff wore white laboratory coats, and there were signs for the inmates outlining the admission procedure. After processing had been completed, the inmate received some food — a small reward, but it may have helped in certain cases. If an inmate proved unco-operative, he was just left sitting on a bench in the waiting area. The more difficult inmates were placed in small holding cells in the admissions area, also on a we-are-ready-when-you-are waiting basis. We were advised that there were few real problems and that tension had been considerably reduced in a potentially troublesome area. The atmosphere was more that of a clinic than that of a jail.



## THIRD DOUGLAS ALLEGATION

On September 21 or 28, 1974, Douglas alleged, there was another incident in the admissions area. He had finished showering, he said, and after using one towel he stood on it and asked the inmate working in the area for another. An officer nearby asked if he was "trying to be smart". There was an exchange of conversation and, Douglas alleged, after he left the area the officer came up behind him and gave him a "shot in the head".

Another correctional officer asked "what was going on". The first officer, whom he identified to the investigators from the book of photographs as C.O.2 Herbert Hogg, was alleged to have said that Douglas was "mouthing off". Douglas said he answered that he was not. According to Douglas, he was then told to be quiet. When he continued talking, he said, he was taken by the two officers into the photography room where he was punched in the head and stomach. After that he was sent to his corridor. Douglas was able to describe the second officer only in a general way and there was no positive identification of him by name or photograph. As for Hogg, he stated that he knew of no such incident.

Douglas claimed that he had a cut over his eye as a result of the alleged assault and that he had asked to see a nurse. The next day, when a nurse visited his corridor on medical rounds, he told her he had a headache, and he was given some aspirin. He said that his eye was "puffed up" and the pupil was red, but that there was no discussion about any assault because he maintained that a correctional officer was nearby.

Douglas said later on the second day he saw his lawyer, and told him about "the beating". At that time he could not name either of the officers and he said his lawyer told him that for that reason he could not do much about it. The lawyer's file indicated an interview with Douglas on October 7, 1974, but he was unable to recall any complaint by his client about any "brutality".

The medical records showed an admission examination by Dr. O. B. Dickinson on September 21, 1974. This would be after the alleged incident. The notation is "no complaint, no injury". The next medical entry was on November 13, 1974, and it was referable to a wholly unrelated matter. There was nothing about any injury on that date. There was no entry in the nurse's journal about the headache or the aspirin. This is not unusual as the request would not be significant since no complaint of assault was made.

By way of postscript, Douglas said that two days later, when he returned from a court appearance, he apologized to the correctional officer, whom he had identified as Hogg, for his "mouthing off". He stated that the officer had said it was all right, but that inmates were not supposed to "mouth off".

As for a finding in this matter, since the identification was made from photographs more than half a year after the event, and identifications by other inmate witnesses had proved unreliable at other times, and in view of Hogg's denial, coupled with the absence of any complaints of assault to the doctor or nurse, and the evidence of Douglas's own lawyer, it would be wrong to make an adverse finding against Hogg in this case. When giving



oral evidence at other times, Hogg had impressed the Commission as an experienced and moderate correctional officer. I do not think that the incident occurred as related by Douglas, either in manner or severity. If there was an incident and Douglas was struck, even in a less severe way, it once again points out the need for proper senior officer control in the admissions area and perhaps the need for the other procedures that were suggested in reference to Douglas's second allegation.

## THE WATSON ALLEGATION

The initiating incident in this matter on May 12, 1974, was a fight between inmates Watson and Douglas over an "Afro comb". An argument arose and then, Watson related, Douglas started to push him, "so I hammered him and jumped on him". The correctional officers have the duty to protect inmates from assaults by other inmates. Watson was rightly taken from the corridor, charged with fighting, and placed in segregation. He alleged that, on the way, he was assaulted at various times by C.O.2 Joseph Robert Peake, C.O.2 Charles Casey, and an unnamed "lieutenant". He alleged that these assaults, which consisted of punches to the stomach, sides, head, and face, a judo chop to the neck, and a kick to the side were administered both on and off the elevator in the new building, as well as in the segregation cell.

Watson complained that he was not given an opportunity to explain how the fight with Douglas came about and that he had just a short time before ended a 10-day stay in segregation. The Misconduct Report indicated that there was a hearing by the Superintendent the following day and that although Watson was found guilty he was allowed to return to his corridor with a warning.

Watson stated that, after he returned, Peake told him he was "a tough little [deletion]" and smart because he did not fight back when he was "punched out in the hole" and that those who did fight back "got it worse".

Douglas, in his statement, said that after Watson was taken away to segregation Peake came back and told Douglas that "they fixed Watson good for me and one good turn deserves another". Peake then told Douglas to bring him a roast beef sandwich from the kitchen, Douglas said. At that time Douglas was a kitchen aide.

Douglas said that he made the sandwich and "smuggled it" back to Peake. "Peake kept me on the lug for close to a week after that." By the expression "on the lug", Douglas meant that he was bringing food to Peake from the kitchen. Douglas indicated that he knew he was taking a risk because Peake would have denied that the food was for him. He also said that on another occasion he had brought a meal to Dassy.

Inmates considered it an advantage to work in the kitchen because, as Douglas stated, "the guards treat you good and you can always get an extra apple or orange or something". On the subject of taking food out of

the kitchen, the economic advantage to correctional officers in having an inmate do this for them would be small. It could be considered a convenience, as well as having some "homage value". It is a practice that must be discouraged, if for no other reason than that it gives some inmates preferential treatment. If it is not already, it should be an offence for inmates to take food out of the kitchen for themselves or for anyone else. There should be plainly visible warning signs in the kitchen area.

In the old part of the jail, food in the cells is rightly prohibited as it might attract animal and insect life. If there was no sanitary reason against it, I can see no objection to canteen privileges of the sort that exist in many other institutions. The little snack an inmate might be allowed to keep in his cell would make life in jail a little less harsh. Further, this could be used as an incentive to good behaviour, with canteen privileges being withdrawn as a punishment.

On the matter of the alleged assault, Peake recalled the inmate fight about the Afro comb. He also recalled being asked about the comb by another correctional officer, C.O.2 Peter Anson, and this had some evidentiary value in corroborating Watson's story. Watson alleged that when he returned to his own corridor after being overnight in segregation and released by Mr. Whitehead, he was suffering from a swollen eye, among other injuries. Anson, whom he described as a "real nice guy" and "one of the nicest guys I have ever met", asked Watson what had happened. Watson replied that he had been beaten by Peake and Casey, and then alleged that Anson "didn't say too much, but he said, 'I'll give you a hint, Mike, if any of these guys ever give you a rough time, put in a request to see the Superintendent.'" Watson said that Anson then called Peake over and asked about the comb. Later, Anson obtained Watson's comb from Douglas and gave it back to its owner.

I was impressed by Anson's oral evidence on another occasion (the Somerton allegation) and the fact that he had assisted an inmate, Allan King, in his efforts to obtain employment. He was a good example of an efficient correctional officer who took an interest in the welfare and rehabilitation of inmates.

Anson's statement corroborates that of Watson on the collateral issue of the return of the comb. More importantly, it also confirms that Anson observed an injury over one of Watson's eyes and that Watson explained that it was as a result of his being "beaten up by a couple of guards". Anson's statement was as follows:

I know Mike Watson as an inmate of the Toronto Jail. I have him working for me in the corridor if he is in the jail when I am on the 7:00 a.m. to 3:00 p.m. shift, primarily because he makes the beds the way I like them made.

I noticed one morning, some time last year, I can't recollect the exact time, that he had an abrasion over one of his eyes. I think it was his left. I queried how he received it.

He said he had been in a fight with another inmate, named Douglas, also a coloured guy, over an Afro comb, which he said belonged to him. I asked him, did he get it back and he said, "No". So I told him I would endeavour to get it back for him.

I asked one of the other guards, I can't recollect at the moment who it was, if he (the guard) had Watson's comb, and he replied, "No."

Douglas happened to be walking through the dome at the time. I stopped him and asked him did he have Watson's comb. He said, Yes, he'd go and get it. As he turned around to go back to either 3 or 4 corridor I saw the comb in his back pocket. I removed it and asked Watson was it his comb and he said "yes" and Douglas agreed that it was his, Watson's.

Watson then carried on working. After about 10 or maybe 15 minutes, he (Watson) came over to me and said, "I don't know what to do Mr. Anson, I want to put in a complaint." I asked him what the complaint was about and he alleged that he had been beaten up by a couple of guards. I asked him the names of the guards and he said he didn't wish to name them to me anyway. I told him there was nothing I could do if he didn't tell me any names and advised him that if he still wished to make the complaint to see the Superintendent, which I believe he did. I never did find out the names of the guards who he alleged beat him and that is all I know about it.

Watson, in his statement, did not indicate that he subsequently spoke to the Superintendent about the alleged assault. His interpretation of his conversation with Anson was that if such an occurrence was repeated, he at that time should ask to see the Superintendent. There were also no records filed of any complaint to or investigation by the Superintendent.

Peake, in his statement, said that he could not recall having any dealings with Watson over Watson's allegation that he was punched and kicked by him. He concluded, "I cannot understand why he would make these allegations."

Casey's reply to Watson's allegation that he (Casey) together with Peake and "a lieutenant" assaulted him was as follows:

On this particular occasion I was on duty on 7 and 8 corridor. I heard a scuffle at 1 and 2 corridor and I walked over to check and observed the inmate Watson and an inmate Douglas squaring off. Mr. Peake was at the grille of 1 and 2 corridor when I arrived. We entered the corridor and broke the fight up. There was no necessity of taking hold of these inmates. Both inmates were taken to the dome to see the Chief. Douglas was sent back to 1 corridor and Watson was taken to the hole without any incident.

I find it hard to believe that Mike Watson would make this allegation, as I got along with him very well.

The log book of 3B segregation shows C.O.5 Stanley Frank Johnson as the senior officer who booked Watson into segregation from Corridor 1. Since he was not working directly either in that corridor or in the segregation area, Johnson was presumably the senior officer in charge of the escort taking Watson to segregation. Hence it was he who was the previously unidentified "lieutenant" referred to by Watson. His very succinct denial is as follows:

In connection with the Michael Watson allegation, I probably was the officer in charge of the shift.

I don't recall Michael Watson as an individual, however I have read his statement and I recall no such incident taking place.

Statements obtained from C.O.2 Frank West Morris and C.O.1 Robert George Sacre were also filed in this matter. Morris said that he was the officer on duty in 3B segregation and that he recalled Watson being brought in, but that there was no assault in the segregation area. He further stated that Watson was walking on his own in front of three officers.

Sacre recalled the fight between Watson and Douglas. At that time he was relieving in Corridor 1. He said he yelled to the two inmates to stop fighting. When they ignored him, he entered the corridor while another officer gave him cover. "I pulled Watson off Douglas and escorted him out of the corridor." Other officers arrived and Watson was taken away, he said. "I did not see Watson again that day. He was not assaulted . . . in my presence."

Although Watson could have received the injury over his eye in his fight with Douglas, I doubt very much that this was the case. Rather, I am of the view that the injury was a result of the use of excessive force by the correctional officers. If this force was not administered while Watson was in the segregation area or in Corridor 1, it must have been administered between those two places.

Undoubtedly Peake and Casey considered that they were acting in the best interests of the jail and the general inmate population in punishing Watson for his fight with Douglas. I am of the opinion that that punishment was over and above the laying of a charge and the placing of Watson in segregation. Watson, feeling that he was aggrieved in not being able to be heard as to the cause and details of his fight, may well have resisted going to segregation. Some force may have been necessary to bring him to segregation. I am of the opinion, however, that extra force was added. It may be that the "something extra" was intended to be by way of a lesson to Watson against fighting. He had been up on a misconduct charge the month previous for just such an offence.

As for Johnson, I hope that this senior officer did not join in, in the use of extra force. In any case, it was his duty to ensure that unjustifiable force was not used in escorting Watson to segregation. I am not wholly satisfied that he fully carried out this duty.



# The Finlayson Allegation

## *Exhibits 589A-O*

The alleged assault on John M. Finlayson by correctional officers came to the attention of the Commission during the evidence of Father Ernest Paul Callahan when the Commission was hearing the Courts allegation. Father Callahan was the full-time Toronto Jail chaplain from 1968 until his retirement in 1975. From his and other evidence it would appear that Finlayson was assaulted during the night of August 1-2, 1973, most probably during the 11:00 p.m. to 7:00 a.m. shift.

Finlayson, age 37 at the time, was arrested on July 30, 1973, and charged with the murder of a nine-year-old boy in the Ford Hotel in Toronto. The boy's death had attracted considerable publicity. Finlayson appeared in court on July 31 and on his remand was taken to the Toronto Jail where, for protective purposes, he was put in one of the segregation cells. The 2B segregation log indicated his admission to that area at 10:50 a.m. on July 31.

Father Callahan saw Finlayson in the afternoon of August 1. The log entry indicated that the visit ended at 4:10 p.m. It was Father Callahan's evidence that, although suffering from emotional shock, Finlayson was physically well at that time and had no marks on him.

Father Callahan saw Finlayson the next morning (August 2). According to the 2B log this visit lasted from 10:24 a.m. to 11:22 a.m. At 12:05 p.m. the log indicated a visit to Finlayson by the Metropolitan Toronto Police. Staff Sergeant James Majury of the Homicide Squad indicated that it was he who visited Finlayson.

Father Callahan said in his statement that when he saw Finlayson on



August 2 he had contusions on his left eye and said he had been choked by correctional staff. This would be while he was being detained in protective custody. Father Callahan stated that he was very upset about this and when he left Finlayson he went and reported the matter to the Superintendent, Mr. Whitelhead. Father Callahan said that the Superintendent was visibly upset and said that something would be done about it.

Shortly thereafter it was decided that Finlayson should not be seen by anyone other than his mother, his legal counsel, and Father Callahan. When his meals were served, a senior officer was required to be present. Apparently these arrangements continued until Finlayson's transfer to the Mental Health Centre at Penetanguishene in March 1974. At that time Finlayson was found by the court to be not guilty of the offence by reason of insanity and it was ordered that he be held in close custody at the pleasure of the Lieutenant Governor.

Father Callahan said that Finlayson informed him that on the morning of August 2 he was visited by a couple of guards between 3:00 and 4:00 a.m. and "roughed up".

Staff Sergeant Majury confirmed Father Callahan's evidence that there were marks on Finlayson's face. He asked Finlayson about them and when he "passed it off and said that he didn't want to talk about it" he did not press the matter.

When Finlayson was interviewed he advised the Commission investigator that two correctional officers came into his cell and knocked him around "a bit". He described one as "a big fellow" and the other as "stocky but short". He said that the shorter officer did the name-calling and choked him, asking whether that was what he had done to the boy. He also said, "They threw a few punches to the mid section with closed fists, knocked my head around and slapped me a few times." He indicated that the assault did not last long and that while it was going on a third officer stood outside the door.

All correctional officers who were on duty in the segregation area when the assault occurred were interviewed and all denied any complicity. I have inspected the 2B segregation log and the only time that three officers are listed as having been in the area at the same time was at 5:00 a.m. on August 2, when blankets were taken out of the cells by C.O.2 Gordon John Bassett, C.O.2 Samuel Curry, and C.O.2 John Donald deMille Osborne. Apparently this was a routine duty and the log indicates that on the previous morning the same three officers were similarly engaged. These officers were among those interviewed and from whom denials were received.

The crime with which Finlayson was charged was, in the words of Father Callahan, "particularly reprehensible." Finlayson said that he would not have initiated any complaint himself, for two reasons. One, he was not "really hurt" and, two, if the positions had been reversed he would have felt the same way as the correctional officers. "Asking tolerance in a situation like that is kind of difficult." Finlayson expressed the further opinion that, generally, he had a "good stay" at the Toronto Jail. He said he found four out of five officers "capable" and "competent".

Finlayson was shown the photographs of the correctional officers, and after looking through them four times was unable to identify the persons

who had attacked him. That there was such an attack, I have no doubt. Conceivably it could have been made by anyone on duty on that shift, whether working in the segregation area or elsewhere in the jail. The fact that three correctional officers were involved, one presumably as a "look out" and the other two in a direct assault, indicated a conspiracy to assault an inmate who was being specifically held in protective custody because of the repulsive nature of his crime. The whole purpose of protective custody was breached by these officers, who wished to punish rather than guard and protect.

Had the result of the assault been more serious an outside investigation should have been called for by the Superintendent when he was spoken to by Father Callahan. As it was, further protective steps were taken which prevented any further non-professional conduct on the part of the staff. From time to time, correctional officers are called upon to guard and protect persons whose conduct and crimes they disapprove of. The properly selected and trained correctional officer will conduct himself as professionally and objectively as the policeman who makes the arrest and the court that tries the case, no matter what his personal feelings, if any. Without such conduct, correctional staff will never achieve the professionalism or esteem they strive for.

I am satisfied that correctional officers who would be guilty of such offences are few in number. As long as some do exist, it is up to the Ministry, the Superintendent group, and senior staff to ensure that there is proper control and supervision and that inmates, whether in protective custody or not, do not become victims of assaults committed by staff.

# The Graham Allegation

## *Exhibits 590A-L and 590X and Y*

Barry Thomas Graham was born in February 1952. He alleged that he was assaulted by then C.O.4 Alexander John Lochhead, C.O.2 James B. Brown, and C.O.1 Charles Edward Casey. According to the Misconduct Report, the date of the alleged assault was March 10, 1973. Graham was 21 years of age. By his own admission, when interviewed in October 1974, he had already spent three and a half years in various Ontario jails and correctional institutions. He estimated that about one year of that time had been spent in segregation. "You might say I was a rebel. Sometimes I would get in fights with other inmates, sometimes it was for giving the guards a hard time. Most of the time when I went to segregation it was my own fault."

On the occasion in question, Graham became involved in a fight with another inmate, named Hajdinjok. There was some suggestion that Graham was acting in defence of another inmate, Gordon Courts. As a result of the fight, Hajdinjok sustained "severe eye injuries, necessitating removal to the hospital for treatment". Graham was charged and taken to segregation.

Graham alleged that on the way to segregation he was punched and kicked. He claimed that, in the basement tunnel, Casey "went to punch" him in the face, and that he then threw at Casey a box of letters he had in his hand. "Then everybody started punching me and I went down to the floor, and they then pounded and kicked me." He alleged that he was assaulted on the way to the elevator as well as in the elevator and again on the way to segregation. Finally he alleged that, when he was putting on his baby dolls and while he had his hands over his head, Lochhead "pounded"

him in the mouth.

Graham claimed that, as a result of the assault, he sustained bruises to his face which included black eyes and a swollen jaw. He said his "wife" saw his bruises on a visit and contacted his lawyer. The lawyer spoke to the Superintendent and, according to the lawyer, the Superintendent agreed to transfer Graham to the Mimico Correctional Centre. Mr. Whitehead's Misconduct Report indicated a finding of guilt, but imposed only a warning penalty. There was a notation by Mr. Whitehead that the other inmate, Hajdinjok, was an aggressive and difficult person.

Graham's common-law wife was interviewed in September 1976, and she stated that Graham had advised her not to talk to anyone about the incident. In his own statement, Graham had indicated that, after the incident, Brown extended a favour to him in allowing a longer visiting period and that Casey had also helped him by telling another officer who was giving him "a bit of a hard time" to "ease off". Graham estimated that he had been in the Toronto Jail on about 10 occasions.

As for the correctional officers, they alleged that Graham refused to go to segregation and struck out, punching and kicking, and had to be restrained "as he had become very violent". It was their contention that the force used was no more than was necessary to place Graham in segregation.

The allegation against Lochhead was a serious one, for if Graham's evidence is accepted, it was a senior officer who punched him at a time when he was not fighting but apparently resignedly putting on his segregation garment. It was somewhat disturbing that this type of complaint appeared from time to time against various correctional officers, including some of senior rank. It was almost as if a souvenir parting shot had been administered by way of reminder, warning, or punishment.

I accept as a fact that Graham sustained some injury in this altercation. Unfortunately, his common-law wife's reluctance to relate what she was told by Graham deprived the Commission of even hearsay corroboration.

There is no doubt that Graham was, by his own admission, a troublesome inmate, at least at times. On this occasion, he was not happy at being placed in segregation. He considered that he was being punished unjustly and that he was, in his fight with Hajdinjok, defending the position and rights of inmate Gordon Courts. In the circumstances, it was not unreasonable to suppose that he was physically resisting the order to go to segregation.

As for how strongly he was resisting and how strong the counter measures were, it is difficult to say. The correctional staff were justified in using such force as was necessary to contain and control Graham and to take him to segregation. If more force than that was used, it was unjustified. It is, of course, realized that one cannot measure precisely at what point justifiable force becomes unjustifiable force and, ergo, an assault. Some reasonable assessment could, no doubt, be made by an independent or neutral observer, or by someone present with a responsibility to be truly objective.

It is therefore recommended that when a very difficult inmate is being moved to segregation, in addition to the normal senior officer who is in charge of the escort, the Superintendent or his deputy should also be present. One of the responsibilities of the second person would be to decide what



is sufficient controlling force. Such presence might also have a deterrent effect on the inmate and the correctional officer.

Experience and rank alone might not be sufficient, and in case at any time it is impractical to have someone of the Superintendent class present, certain specific senior officers might be detailed to act. In this connection, one thinks of someone such as C.O. 5 Robert Nuttall, who has the confidence of many inmates and correctional officers and who has shown good judgment in trying circumstances.

It would also be advisable to have crisis teams of trained officers who could coolly talk to agitated inmates. Such officers would have to have the patience not only to talk to difficult inmates but also to "hear them out".

Another suggestion that might be considered is to defer for a time the moving of an agitated inmate to segregation. He might first be placed in some waiting room or cell and left there until he had quietened down. There is little problem where the inmate resigns himself to segregation and proceeds to that area without fuss or bother. But the inmate who resists because of a phobia or a dislike of segregation, or because of a sense of injustice about his punishment, should be treated in a different way. Maybe medical tranquilization is the answer for some.

An excited or aggressive inmate who is lead to segregation against his will and goes "berserk", as has been related in some cases, can cause injury to the correctional officer as well as to himself. Some people strongly resent being touched or even having the space about them penetrated, and any such tendency is accentuated in a custodial setting. Some aggressive people respond aggressively when touched or "nearly touched" while in a confined environment. This should be understood by correctional staff and there is no better way of having this done than to include such instruction in their training program.

Despite the protestations to the contrary, I believe that there was some unnecessary "extra" force used against Graham, at a time when it was not needed for the purpose of controlling him.



# The Hariczuk Allegation

## *Exhibits 591A-J and 591X and Y*

Ronald Hariczuk wrote to the Commission on July 17, 1975, alleging that, the previous evening, he had been assaulted by C.O. 1 James C. King. He alleged that the assault consisted of being kicked in the buttocks and punched in the right side.

The letter was received on August 6, 1975, and the interviews by the Commission investigators began the next day. It is one of the advantages of recent complaints that investigations can be commenced while events are still fresh in the minds of witnesses and also while witnesses can be more readily located.

In his letter, Hariczuk mentioned an inmate witness. Unsuccessful attempts were made to interview this person both at his home address in London and in the Toronto area. Hariczuk stated that this witness could corroborate the assault by King. As there was other corroboration, the failure to find this witness did not affect the finding. Indeed, there did not appear to be very much in conflict in the evidence, other than King's denial of assault.

I find that Hariczuk was properly removed from his corridor by King for creating a disturbance. He had been warned on previous occasions that evening, but to no avail. King said that he escorted Hariczuk to the rotunda, intending to leave him there for a while and then return him to his cell.

Hariczuk, in his statement, indicated that the kick and punch by King occurred between the time he left the corridor and the time he was escorted to the rotunda. He said that when he arrived in the rotunda he was ordered by King to "stand in the corner". This is undoubtedly a punishment less

severe than putting an inmate on charge and in segregation pending a hearing. And no doubt King thought that, by doing this, and even adding a kick and a punch, he was giving Hariczuk a break. It is something akin to the old-time police officer who, catching a boy in some misdemeanour, would take him behind a fence, tweak his ear, and with a kick in the pants send him off home, with a warning to behave. Today that policeman would be expected either to charge the boy or to let him go with a lecture. If he touched the boy, he would be leaving himself vulnerable to an assault charge.

Although in some cases the "warning type of minor assault" might be the lesser punishment, it cannot be allowed in a custodial institution. Firstly, it is against regulations for a correctional officer to assault an inmate. Secondly, it is a practice that could be abused and the result could be a severe assault. Where does one draw the line as to what assault would be acceptable and what would not be acceptable? It would leave the door open for any correctional officer physically punishing an inmate without a hearing to hide behind the screen of justification. Therefore, it cannot be risked and must be condemned and prohibited, even where it is "well meaning". No doubt, in other cases that have been dealt with in this report, other correctional officers at times believed that they were acting in an inmate's best interests and maybe those of the jail itself by not charging someone but by teaching him a lesson or giving him a warning on the spot.

As for Hariczuk, one of the other officers, seeing him standing in the rotunda, had him return to his corridor. At the next shift, Hariczuk asked to see a nurse. The nurses' log indicated that, at 11:10 at night, nurse Edna Kendrew saw Hariczuk in surgery. He claimed an assault by an officer and she found, on examination, "a reddened area on the right buttock and on the right side".

It was discussed elsewhere that a nurse or doctor who has been advised of an assault by a correctional officer upon an inmate, whether or not the nurse or doctor believes it to be true, must automatically report the matter in writing to the Superintendent. This takes the onus, criticism, or stigma of reporting away from the nurse or doctor. The correctional officers who work in the same institution could therefore not blame the nurse or doctor, as might be the case if the decision to report was left as a judgment call.

In this case the assault, even if minor, did take place, and the finding, for the above reasons, must be that it was unnecessary.

# The Hill Allegation

## *Exhibits 592A-K, 592X, 592X<sub>2</sub>, 592Y, and 592Y<sub>2</sub>*

James Thomas Hill addressed two letters of complaint to the Commission 592X<sub>1</sub> and 592X<sub>2</sub>. They were dated November 9 and November 12, 1974. The typed copies were filed as Exhibits 592Y<sub>1</sub> and 592Y<sub>2</sub>. At the time of writing his letters, Hill was in custody in the Sudbury Jail. The second letter was in more detail and was similar in certain aspects to the statement obtained when Hill was interviewed at the Sudbury Jail by one of the Commission's investigators. Hill's complaint concerned an alleged assault, presumably on May 16, 1974.

Some of the other exhibits filed contained psychiatric reports on Hill, who was 34 years of age and Ontario-born. Indeed at about the time of the alleged occurrence, Hill was in the Toronto Jail on a psychiatric assessment ordered by the court in connection with a pending hearing on charges of possession of stolen property, uttering a forged document, and impersonation. He was declared fit to stand trial and subsequently (July 4, 1974) found guilty of all three offences.

The Toronto Jail incident complained of arose out of a request to see the Superintendent. When Hill was brought before Mr. Whitehead, Deputy Superintendent Farquhar and Assistant Superintendent Russell were also present. Hill made known the purpose of his visit, which was to obtain permission to leave his cell, to request a radio, to request a correspondence course, and also to see a justice of the peace in order to lay a charge of assault against a police officer of the Metropolitan Toronto Police Force.

According to Mr. Farquhar, "Mr. Whitehead listened with patience to

Hill and advised him as to which course he should adopt and instructed him [that] the interview was at an end and advised him to leave the office. Inmate Hill evidenced some reluctance to leave and I took him by the arm and led him from the office onto the B landing and turned him over to the officers then on duty."

These officers were C.O.5 Stanley Johnson and C.O.2 David Webster Cockburn. Hill alleged that they took him to the segregation cells and ordered him to change into the segregation garment, and that while he was doing so, Johnson and Cockburn assaulted him. "I had my hands above my head while putting on this garment and I got hit in the solar plexus by a fist . . . I then started to fall down and I received 15 to 20 fist shots." He then said while on the ground he was kicked in the back, legs, and shoulders. "As I rolled into the cell with the garment over my head, they continued to kick me and hold me down." Hill further related that at the time he was struck Johnson said, "If you want to charge anybody with assault, charge me with assault."

Cockburn in his statement denied any assault, saying that Hill refused to enter the segregation area and that he and the senior officer (Johnson) pushed Hill in, but other than that they used no force on him.

Johnson recalled the incident, adding that he, also, was in the Superintendent's office when Hill came in making his demands. "He appeared to be mentally unstable and I was ordered by the Superintendent to remove him from his office." Johnson claimed that no more force was used than was necessary to put Hill in a segregation cell.

The logs of 1A hospital and 1B segregation indicated that Hill spent two days in segregation. Yet there is no evidence that he was placed there on any charge and there was no hearing. There is nothing to indicate that he was in protective custody, although at some other time he had apparently attempted to injure himself.

Mr. Farquhar, in his statement, said, "Hill was not a person who could be described as violent when in custody, but rather passively resisted authority and other than the nuisance factor he generated through his actions, he caused no concern as to physical force."

Hill may have had his problems. It was indicated that he was a prolific writer of letters to many government persons, "a chronic complainer, and a source of irritation to the other inmates". Placing him in segregation may have solved some problems, but how could it be justified?

As for the alleged assault, it was a repetition of charges made by other inmates of being assaulted while changing into their segregation garments. Nor was it the only instance in which Johnson had been accused of such conduct by an inmate.

Mr. Carter, in his written submission on this allegation, stated, in part, "that in light of the statements of the parties involved, there is a crucial question concerning the credibility of the inmate Hill and his ability to perceive a situation as it actually exists. Although from the various exhibits it is difficult to conclusively comment on Hill's credibility, from the statements of those interviewing him, those who were involved with him at the jail, and the past record of his numerous complaints, serious doubt should be cast

Royal Commission, Suite 305, NOV 10 1974

145 QUEEN ST. W.  
Toronto, Ontario M5H 2A0

181 ELM ST. W.  
SUDBURY, ONT. J0G  
P3C 1T8

Dear Sir:

To whom it may concern: I have information  
the I feel is important to your inquiry.  
THEREFORE: I know the NAMES AND THE  
witnesses of the people who in my own case  
AND DETERMINATION, HAVE TO BE CHARGED &  
A "Justice of the Peace" Please send a list  
of the "Peace" AND ALL "information" AND I will  
give you the names of the people you are  
"inquiring" about. Because I know this has happened  
to other people. Please Reply! Urgently  
Before my release date.

Yours Very Truly,

James Thomas Hill

RECEIVED  
NOV 14 1974

THE ROYAL COMMISSION ON  
THE TORONTO POLICE AND  
CUSTOMS SERVICE

JAMES THOMAS HILL

James Hill's letter to the Commission, dated November 9, 1974.



upon this inmate's credibility".

It is interesting to note that although Hill was reputed to have been a chronic complainer and was seen by a nurse and three doctors at different times shortly after the alleged assault, he did not make any complaint to any of them. Hill said that he had mentioned the matter "casually" to a visiting clergyman. He said that the clergyman "told me he wasn't there to discuss jail problems and gave me some pamphlets and left". He related that he told his father "about what happened" and his father saw one of the senior officers to see if he could have him released from solitary confinement. He said that after three days of his father "bugging" the Toronto Jail authorities he was transferred to 5 dormitory.

In Hill's statement he also said that he complained to his lawyer that he had been assaulted and his lawyer told him to "forget about it". The lawyer was interviewed and said he recalled Hill complaining about the treatment he had received from the police but he did not recall Hill saying that he was beaten in the Toronto Jail. The lawyer added that Hill "was a complainer" and that "he didn't appear to like the way he was treated anywhere".

I have noted at other times a similar reluctance on the part of some lawyers to pass on to the Superintendent complaints made to them about ill treatment at the Toronto Jail — the least a lawyer should do on behalf of his client. The Superintendent may then inquire into the validity of the allegation. Without this information he might never hear of the complaint. In some circumstances it may be appropriate for the lawyer to take additional steps. The proposed Toronto Jail Council would give a lawyer another means of addressing an alleged complaint short of notifying the police or a justice of the peace.

Of course, the same procedure should be adopted with reference to assaults by inmate on inmate. A corresponding right should be afforded to correctional staff who have been assaulted by inmates. It is important that *all* complaints of assault should be investigated by one means or another and not allowed to fester.

In support of Hill's complaint were the repeated allegations of assault on inmates while donning their "baby dolls" and the fact that Johnson had been mentioned by others in this regard. Is it "similar fact" evidence that would lead one to a conclusion as to a *modus operandi*, or similarity of system, that at times may be relevant and recognized in criminal law?

Against Hill's allegation is the fact that he had the opportunity to complain to various people and did not do so, as well as the doubts about the reliability of his evidence generally, which were even shared by his lawyer. There was also the general tendency of Hill to complain.

The medical reports did not indicate any injury. Therefore there would not appear to have been any serious assault to the extent that Hill alleged. I do believe, however, that there was some unnecessary assault on Hill while he was donning his segregation garment. I place some importance, in this regard, on Mr. Farquhar's assessment of the type of inmate that Hill was. This does not, of course, answer the question as to why Hill was placed in segregation in the first place.

# The Isaacs Allegation

## *Exhibits 593A-N and 593X*

The complaint of Paul Anthony Isaacs came before the Commission by way of a letter from Isaacs' solicitor. The letter read, in part, as follows:

I have acted on behalf of Paul Anthony Isaacs with respect to certain criminal charges for which he was convicted and sentenced on November 6, 1974. He is currently serving a sentence of three months definite, six months indeterminate, at the Toronto Jail. Paul Isaacs is 16 years old.

I received a telephone call from the Toronto Jail on February 10, 1975, and I saw Mr. Isaacs in jail that afternoon. He told me that he was physically assaulted by a jail guard named Davidson, assisted by two other guards, on the morning of Sunday, February 9, 1975.

My client told me that he was punched in the stomach and chest, had his hair pulled, and also had his right arm injured as he was being forced down a stairway. He was treated by the doctor on duty on Sunday morning, and was X-rayed on Monday morning.

I understand there is a Justice of Peace at the Jail, and I have advised Mr. Isaacs to lay charges. He has also asked that the matter be investigated by your Commission.

As will be noticed from the above letter, the Toronto Jail, in addition to being a remand centre, also serves as a custodial repository for persons serving sentences. Usually these sentences are of short term and where the inmate is normally resident in Metropolitan Toronto. This makes visiting easier for

the inmate and his family. It also adds another dimension to the jail population. It means accommodating inmates for more than the average 10-day stay without the recreational, educational, and other facilities to divert that are normally found in the longer-term detentional institutions. The result is bound to be boredom and tension.

Since the establishment of this Commission, some programming for some inmates has been attempted. This is to the credit of the Superintendent, William Taylor, the Assistant Superintendent, James Whitely, and the program officer, Mrs. Gwen Heffernan. The physical and geographical plant and facilities at the Toronto Jail do not make their task an easy one. It is indeed quite a contrast from that available in the newer and more modern correctional centres such as Maplehurst and the two new detention centres in Toronto, Metropolitan East and Metropolitan West.

The incident complained of is succinctly set out in two entries made by C.O.2 Alexander Davidson, in the Corridor 10 log for the 7:00 a.m. to 3:00 p.m. shift on February 9, 1975.

07.00 Cells unlocked. Inmates awakened. Davidson.

07.20 Isaacs mouthing off and using obscene language. Had to use a bit of force to take him downstairs to Dome. Davidson.

It would appear from statements obtained and information from other exhibits that Isaacs resented being awakened and profanely advised Davidson that he did not wish any breakfast. Davidson then locked Isaacs' cell. When breakfast was brought into the corridor for the other inmates, Isaacs yelled to Davidson to open his cell and that he now wanted his breakfast. Davidson refused and the other inmates in the corridor protested noisily. One inmate threw a cup against the grille, causing it to shatter. Davidson called for another officer to take his keys and to give him cover. He then entered Isaacs' cell and told him to get dressed as he was placing him on charge.

On the way down to the rotunda, Isaacs' arm "caught" on the bannister of one of the stairways. It would appear that this was at a time when one or more of the officers were "tugging" at him. This accounted for the injury recorded by Dr. Kenneth Stark, one of the jail doctors. His medical entry for February 9, 1975, contained the following note: "Abrasion of right elbow from being injured on side of stairs." There was indication of some swelling and an X-ray was arranged for the following day. This was negative for fracture. An entry on February 13, 1975, noted that the elbow was still hurting but the swelling was down.

Isaacs was charged with "refusing to obey an order and using 'excessive' profane language". Although at first he denied using such language against Davidson, later he admitted he "may have sworn at Mr. Davidson". He was found guilty, and a punishment of five days segregation with regular diet was imposed. In the hearing before the Superintendent, Isaacs complained that "Mr. Davidson did manhandle me" and there is a note to this effect in the Misconduct Report. There is, however, no notation on the same report of any finding by the Superintendent on this complaint.

I find that the Superintendent did right in noting the complaint made by

the inmate during the misconduct hearing, even though it was not connected with the charge. It was something that happened afterwards, but might be considered as part of the episode as a whole. Therefore, tangentially, it was a part of the *res gestae*. That being so, it would have been preferable to have noted on the same report what steps the Superintendent took to investigate the complaint, his findings, and what if any disciplinary action resulted.

It is also suggested that where a correctional officer charges an inmate with disobeying an order, the order that was disobeyed should be specifically stated.

Isaacs was in the Toronto Jail as a first offender. He was 16. It is suggested that young first-time offenders, and particularly those with no previous record or at the most one or possibly two relatively minor prior convictions, should not serve their sentences at the Toronto Jail but at some institution geared to house young offenders (16-20 years of age). Otherwise they are exposed to schooling in crime by older and more experienced inmates.

Another lesson from the Isaacs incident is that where an inmate is resisting transfer out of his cell to segregation or even resisting the lesser punishment of "standing in the corner" on a landing or in the rotunda, a senior officer should be summoned. It is resisting that may cause the problem. The senior officer would often defuse the situation, cool down the inmate, and make an incident less likely. Further, there would be less likelihood of unfounded accusations against line officers.

Other than the explained injury to Isaacs' arm, and there was no issue between inmate and staff as to how this occurred, the medical report was silent on any additional injuries. I therefore conclude that the alleged punch in the stomach and chest were not complained of to the doctor. It could not have been of any significance, if indeed it happened at all. More likely it was part of the scuffling required to move a resisting inmate and was likely more accurately described in Isaacs' complaint to the Superintendent as "manhandling". Davidson denied such striking. There may be a very fine line between using sufficient force to move a reluctant inmate and "roughing up" that inmate. Davidson and the other officer who assisted him may not have cared to weigh with exactitude the niceties of gentle persuasion, but on the weight of evidence I do not find that there was any deliberate punching. If Isaacs was resentful of his treatment there may have been an understandable exaggeration or "puffing" of his complaint. This could be either deliberate on his part or subconscious. As mentioned, if a senior officer was called in such cases, allegations might be avoided or at least reduced in number.

# The Kienapple Allegation

## *Exhibits 594A-O and 594X*

A typed letter of complaint was received from John Edward Kienapple in November 1974. At that time he was at Collins Bay Penitentiary serving concurrent 10-year sentences for rape and carnal knowledge of a girl under 14 years of age. Kienapple was born in the Kitchener area in 1946. His record, going back to age 16, comprised five previous convictions which included three for theft charges and one for indecent assault on a female.

In Kienapple's letter to the Commission, he referred to "the horrifying punishment" he received at the Toronto Jail. The incident complained of occurred on February 22, 1971, about one week before he received his 10-year sentences. On that date he had returned from court at about 2:00 or 2:30 in the afternoon and asked for his "special diet" because his stomach was bothering him. C.O.4 Lloyd Lewellington Robinson was then a line officer. It was he, Kienapple alleged, who assaulted him. Robinson indicated in his statement and on the Misconduct Report he had signed that special diets were not given out except at regular meal times. There was some interchange between Kienapple and Robinson, during which Robinson charged that Kienapple said, "I want my [deletion] diet now, you [deletion] dummy. All you [deletion] are all the same. If you cannot get my diet, get me a [deletion] glass of milk or [deletion]."

Robinson stated that Kienapple was then removed from the corridor and placed in "the small reception room thence to segregation cells". Kienapple was charged by Robinson with using "abusive and indecent language" and "misconduct". In the Misconduct Report, Robinson observed that Kienapple



had been in an agitated mood since returning from court and that he should be disciplined (presumably for his misconduct).

A second misconduct charge was laid immediately afterwards, this time for attacking or threatening an officer. The details of the misconduct, as set out by Robinson in his report, were: "While escorting resident John Kienapple to segregation along with Lt. Burns and Mr. McInnes, Kienapple became abusive. He was told to be quiet. On arrival at 2B Corridor Kienapple took a swing at me and said, you are the [deletion] cause of this, you black [deletion], and during the struggle of restraining him he banged his face on the edge of the cell door. After this the surgery was notified."

C.O.2 W. C. McInnes, the other line officer, signed as a witness to Robinson's report. Unfortunately he had died before this matter was investigated by the Commission.

The third officer present was C.O.5 Thomas Burns, later a Deputy Superintendent of the Mimico Correctional Centre. In his report he stated: "Kienapple attempted to strike officer Robinson and during the ensuing struggle Kienapple struck the cell door with his face. I notified surgery and Kienapple was taken to the Toronto General Hospital where two stitches were inserted in his upper lip."

The Superintendent found Kienapple guilty on all counts and imposed "indefinite close confinement". The hearing was on February 23, 1971. The log indicates that Kienapple was transferred out of segregation to one of the corridors at 8:10 that same night.

Kienapple in his letter of complaint alleged that he was in "the hole" 15 days before being let out. This was obviously not correct. He further stated during his interview that the Superintendent, Mr. Whitehead, three days after the incident, came to see him and "wanted to make a deal", whereby if he "forgot what happened" and laid no (assault) charges he would be let out of segregation "right away". Kienapple said he advised the Superintendent he was going to lay charges, no matter what happened.

The records indicated that Kienapple was again wrong in his statement, at least in so far as the hearing date was concerned. The hearing was held the next day, not three days later.

As for the suggestion of a "deal", this was denied by Mr. Whitehead. "Under no circumstances would I try to make deals with any of the inmates. I would deal with the misconduct in the proper manner." I accept Mr. Whitehead's statement without any reservation. It certainly would have been ill-advised for the head of a large jail to make such an agreement. He would have left himself open to blackmail demands and future charges.

There is no doubt that Kienapple was injured on February 22. He was taken to surgery and from there to the Toronto General Hospital where his lip was sutured and X-rays were taken of his skull, face, chest, and ribs. The clinical diagnosis was "multiple injuries".

It may be that his injuries were taken into account when it was decided to release him from segregation the same evening. It would appear that the injuries were also more severe and more diverse than those of someone who had just "banged his face on the edge of the cell door".

According to Kienapple, he had been in jail approximately 10 months

awaiting first trial and then sentence. There could be various reasons for the length of time it took for a trial to come to court – preparation by the Crown, preparation by the defence, availability of witnesses and counsel, the state of court lists, and so on. The reason or reasons were not set out in the exhibits and it was not within the terms of this Commission to investigate the matter. It is significant only that his custodial term at the Toronto Jail far exceeded the average 10-day period.

The nature of the charge and the record of the accused may explain why Kienapple was not admitted to bail. What was relevant was that with each additional one-week remand the tension within Kienapple was building. Robinson, in his report recognized that Kienapple, on his return from court, was in an “agitative mood”. This being so, should some allowance have been made with reference to his demand and his language? Would it have been the better part of discretion to ignore his tirade or good-humouredly cool him down, rather than insist upon the strictest observance of rules and regulations? Could there have been some accommodation concerning a meal, even if it was not a regular meal-time? This might have meant extra chores for an overworked and harassed officer. Might there not be assigned to the troublesome court cells officers able to operate with a better-than-average low-keyed approach? Would a better trained officer have managed to avoid the confrontation that occurred in this case?

I am fully aware that at times correctional officers need the patience of saints. But there are some officers who are trained to recognize such situations and who, because of their training and their temperament, can more easily and effectively cope with inmates whose raw-edged nerves come close to the surface in stressful situations. Particularly is this problem to be expected where inmates are facing serious charges, with possible long penitentiary sentences.

The answer undoubtedly lies in the assigning of specially selected and trained officers to the most sensitive areas. These officers should be rewarded with incentive bonuses or shorter hours, or both. And those responsible for recruitment should be on the lookout for this type of officer. If there were some incentive advantages or the promise of upgrading, transfers from other institutions might also be considered. The main thing is to recognize the problem and to do something about it by training and assigning special officers.

The training of these officers should include a course in psychology, referable to recognizing and dealing with “troubled” as well as troublesome inmates. In passing, it is interesting to note that Kienapple’s police record indicated that the trial judge, in passing sentence, committed Kienapple to the Ontario Hospital at Penetanguishene as an “involuntary patient”.

Kienapple, in his statement, admitted to an exchange of insults with Robinson prior to being taken out of the corridor. He then stated that on the way to segregation he was first put into a small reception cell. These points are not in dispute by the correctional staff. The remainder of his claim, however, is disputed – namely that in the elevator he was punched in the face, cut in the lips, and had a tooth chipped “off at the gum”. He alleged that he was also kicked twice in the stomach and that all of the elevator

punches and kicks in the elevator were administered by Robinson.

Kienapple stated that when they arrived at the segregation cells he was told to take off his clothes and that three of the six officers who were present there punched, kicked, and judo-chopped him. Kienapple named, as the senior officer with Robinson, C.O.5 Stanley Johnson. Johnson denied being present, and all records indicated that the senior officer was C.O.5 Thomas Burns. Johnson stated if another senior officer had been present he (Johnson) would not have been required to supervise this inmate. Johnson had been mentioned in similar incidents in the segregation area. All of the evidence, other than Kienapple's, indicated that he was not present. Since Kienapple mentioned Johnson as the most senior officer of the original three, and since there was no doubt that Burns was the only senior officer originally present, one must conclude that Kienapple either purposely or inadvertently misidentified Johnson. I find as a fact that Johnson was not present.

I have already mentioned that Kienapple's injuries appeared to be over and above injuries compatible with merely striking his face against a cell door. If he struck at or attempted to strike Robinson, and strongly resisted going into segregation, then some force was necessary. Was that which was used more than was necessary? It is for the purpose of more readily answering such questions in the future that it is recommended that, in cases such as this, the most senior officer in the jail below the superintendent rank should be present, wherever possible, when difficult inmates are being taken to segregation. Involving the Superintendent or his deputy might mean that a misconduct hearing would have to be conducted by a witness to the alleged misconduct. It would also have the disadvantage at times of bringing the Superintendent into the arena. Ideally, then, the most senior officer below the superintendent rank should attend. But when that senior officer is himself within suspicion of being a named participant to an allegation, or of having been present and of having failed to control an assault, then one should go a step higher in the jail hierarchy.

It would be utopian to expect that, no matter how senior the officer in charge, there would never be an allegation against him, false or real, by a disgruntled inmate. It is hoped, however, that this report and the recounting of the allegations will point the way to senior officer responsibility in this very difficult area. The prompt and thorough investigation of all allegations, with supervisory overview by the proposed Toronto Jail Council, should assist in instilling the desired sense of responsibility in the middle-management senior officers and in eliminating from such duties those found wanting.

Kienapple poses the problem of the "up-tight" inmate facing a serious charge returning from court and getting involved in a verbal confrontation with a correctional officer. The inmate uses obscene language out of habit or bravado, or as a means of letting off steam. Some correctional officers, instead of recognizing the cause and ignoring the language, consider it an affront, a discourtesy to their job and a challenge to their authority. The problem in Kienapple's case was further complicated by his apparent need for a special diet. Inmates are not usually fed while in cells at the various court houses. In some other jurisdictions, arrangements are made for inmates to be fed as they re-enter jail from court.

When Kienapple could not receive his special diet, he requested, none too politely, a glass of milk. From the documentary evidence at hand, Robinson reacted more strongly than some other correctional officers would have done. He placed Kienapple on charge. This precipitated a more violent reaction by Kienapple and led to a second charge and Kienapple's allegation of assault. One aspect of the latter was the claimed use of excessive force in the segregation area. I believe that such did occur. This type of complaint exhibited itself so frequently that the matter has been dealt with in the recommendations of this report.



# The Kobelnak Allegation

## *Exhibits 595A-V and 595Z*

John Phillip George Kobelnak was one of the inmate witnesses who gave oral evidence with reference to the Switzer and Malouf allegations involving C.O.1 Glen Roy Bennett. During the hearing of that evidence, it was brought out by Commission counsel that Kobelnak had a complaint of his own. This had apparently been mentioned to the Commission investigators when they interviewed him about the Switzer and Malouf incidents.

Kobelnak was born in Ontario in December 1949. His criminal record dated back to 1968 and included convictions for pointing a firearm and robbery with violence, and two for assaulting a peace officer. One of the peace officers he assaulted was Superintendent Ernest Bond of Millbrook Correctional Centre. That was on July 21, 1972, and on the same afternoon he was transferred from Millbrook, a maximum security institution, to the Toronto Jail.

Kobelnak stated that he “didn’t receive any beating at Millbrook, I did when I came here [to the Toronto Jail], though”. He alleged that while in the admission area he was punched in the stomach, his “full-grown beard was yanked out in pieces”, and he was kicked several times. He said that he was sworn at and that one of the officers, whom he identified as C.O.3 William Mitchell, after calling him “a [deletion] punk”, said that he was not in Millbrook now, but “the Don”, and that he should try to punch out the Toronto Jail’s Superintendent, if he thought he was good enough.

Kobelnak claimed that after going through the admission procedure he was placed in the segregation area to await his hearing on the assault that



had occurred at Millbrook, and that after putting on the segregation garment he received more punches. He identified, from the book of photographs, the following officers in addition to Mitchell who, he alleged, assaulted him, either in the admissions area or the segregation area: C.O.5 John Moquin, C.O.2 Joseph Peake, C.O.2 Robert Douglass, C.O.2 Thomas Davey, C.O.2 Ronald Crebbin, and C.O.2 Douglas Bath.

He further alleged that while in the elevator on the way to segregation, which he referred to as the "specialty ride", he was kicked and punched in the face by C.O.2 Robert Driscoll.

The Toronto Jail records indicated that Moquin was on vacation at the time of the alleged assault and that Crebbin did not begin his employment at the jail until April of the following year. Peake signed in but neglected to sign out on the attendance register. He most probably did not work beyond his assigned 7:00 a.m. to 3:00 p.m. shift. He was not listed as being on duty for the next shift, nor was there any indication on the register that he worked overtime, which normally would be claimed when applicable. It would therefore appear that, with reference to two of these officers, and most probably all three, Kobelnak was wrong in his identification.

The remaining correctional officers, together with others who were on duty in the mentioned areas, were interviewed. None admitted to any assault on Kobelnak.

Nevertheless there was some confirmatory evidence of an assault. The medical report of the following day when Kobelnak was routinely examined, indicated that he was limping and complaining of a sore right knee. The clinical examination was described as "unremarkable". There was this additional note on the report: "Inmate refused to tell how he sustained injury to his knee."

Kobelnak was transferred to the Cobourg County Jail on August 1, 1972, and from there he went to Kingston, Collins Bay, and Millhaven (Federal) Penitentiaries. (Millhaven is to be distinguished from the earlier mentioned Millbrook, which is a provincial reformatory. Both are maximum security institutions, and both are in the Belleville-Kingston area.)

An admission note at Kingston indicated that as of August 4, 1972, Kobelnak was still complaining of a sore knee. On August 23, 1972, there was a medical note, "Jumped on by guards at Don July 22 - kicked . . . soreness in joint."

More serious was Kobelnak's claim that as "a direct result of the beating . . . I had to have the cartilage removed from my jaw." In April 1973 a medical note indicated "complaining of discomfort" in the jaw associated with "marked clicking". A July 1973 notation stated that "he is still having trouble with his jaws". Included in his medical records was a February 8, 1974, report of Dr. J. W. Hazlett, an outside orthopaedic surgeon, who operated on Kobelnak as an out-patient on February 7, 1974, for "bilateral temporo-mandibular synovitis with probable tear and most severe symptoms on the right dating back to mid 1974". The prognosis was very favourable. Although there was no record of a jaw complaint when the right knee complaint was advanced in July and August 1972, the medical history, based on Kobelnak's own statement, was that the symptoms for which he was sub-

sequently operated upon did date back to "mid 1974". Dr. Hazlett's reference to a "probable tear" would be compatible with trauma.

It could therefore be that Kobelnak sustained injury to his right knee and jaw as a result of an assault or assaults by one or more staff members in July 1972. This despite the denials. It is unfortunate that if there was to be an allegation of assault it was not made earlier, when it could have been investigated by internal jail procedure or by an outside body. The day after his transfer from Millbrook, July 22, 1972, Kobelnak refused to tell Dr. Peter Dubelsten, who examined him at the Toronto Jail, how he came to receive the knee injury. Was this a result of a "code of silence" mentioned by other inmates? If there had been a system for reporting such complaints that was well known to inmates and accepted by them as being a "now you may report and if you don't you take the consequences" system, then the aura of suspicion, in this as well as in some other cases referred to in this report, might be less prejudicial to the correctional staff. As it is, the alleged treatment in the reception area, the elevator, and the segregation area follows much the same pattern as allegations made by other inmates.

Kobelnak was undoubtedly a difficult and aggressive prisoner. The Toronto Jail staff had been alerted ahead of time of his pending arrival and of the reason of his transfer out of Millbrook. He was not, therefore, coming into the most friendly atmosphere. Under these circumstances the most senior officer in the jail should have personally supervised his reception and placing into segregation. This was obviously a situation tailored for an incident. Regardless of whether Kobelnak or the correctional staff started it, or who was to blame, there is no doubt in my mind that there was a physical confrontation and that Kobelnak was injured as a result. His error in identifying two or three correctional officers would make it risky to assign responsibility to any particular officers.

Once again, the onerous duties of the Toronto Jail staff in having to process and house the problem cases of other institutions, even if only for short periods, is underlined. As has been recommended elsewhere it would be preferable, wherever possible, that these inmates not be sent to the Toronto Jail, which has all it can do to cope with its own population. In Kobelnak's case, he was kept at the Toronto Jail no longer than 10 days before being sent on to Cobourg. Could not the Toronto Jail have been eliminated from this chain on this occasion?

# The Lamour Allegations

## *Exhibits 596A-J*

John George Lamour was born in 1941. On September 20, 1973, he was arrested and charged with the non-capital murder of a young boy. Subsequently he was found guilty, and on November 12, 1974, he was sentenced to life imprisonment. Lamour had two prior convictions. One was in March 1964 for wounding a nurse with a knife and the other in July 1966 for possession of a weapon dangerous to the public peace.

With reference to the non-capital murder charge, Lamour first appeared in court on September 21, 1973. He was remanded to the Toronto Jail, and was placed in protective custody in 2B segregation. He remained in protective segregation for approximately 9 months before being transferred to Penetanguishene Ontario Hospital. During that period he had 28 remands.

An alleged assault on Lamour came to light during the evidence of Father Ernest Paul Callahan, the Toronto Jail chaplain. Father Callahan had referred to an assault on another inmate facing a similar charge (see The Finlayson Allegation).

MR. MCRAE. And the third one?

A. It involved a man who was on a similar charge.

Q. Involving a child or something?

A. His nephew.

Q. And did that implicate correctional officers or just other inmates?

A. No, he was kept segregated too. Finlayson and Lamour were side-by-side in segregation.

Q. It happened about the same time, did it?

A. Yes.

Q. And what was the name?

A. John Lamour.

Q. Was there visible sign of injury to him?

A. No, not at the time. I suppose there would be swelling after because he got a fairly good blow.

Q. How do you know that?

A. I saw it. . . .

Q. Would you tell us about it Father Callahan? When did it happen approximately?

A. . . . not very long before Mr. Whitehead left.

Q. Perhaps in the spring of 1974?

A. It could be, yes.

Q. We are talking about Mr. Lamour now?

A. Yes, he had just received 100 milligrams of largactil intra-muscular and was being brought out to B landing and the control officer opened both doors at once and the officer involved did not realize that I had come through and without provocation he just belted him.

Q. Where did he hit him?

A. In the side of the face.

Q. With what degree of force did he hit him?

A. I could hear it.

Q. And see it?

A. Yes.

Q. And what happened to Lamour?

A. He was under fairly heavy sedation and he did not stagger or fall. As a matter of fact I am not even sure that he was conscious that he was struck because he did not react at all.

Q. He was standing and it did not knock him down?

A. Oh, no.

Q. He was not being held, was he?

A. No.

Q. Did you say anything or do anything at that time?

A. Yes, I asked the officer which way he thought I should go.

Q. What he thought you should do about it?

A. Yes, whether I should go into the B landing or up to the Superintendent's office.

Q. Yes?

A. And he said, "I am sorry I did not know you were there" and I think I said something to the effect, "Don't apologize to me, you did not hit me; apologize to this man," which he subsequently did.

Q. Right there?

A. Yes.

Q. Did you report it to the Superintendent?

A. Yes, but not that same day.

Q. Was there any hearing or charges or anything laid against the officer?

A. No.

Q. There were not?

A. No.

Q. Were there ever any charges laid as a result of any of the complaints you made to the Superintendent?

A. Not to my knowledge. I think there were strong reprimands.

Father Callahan was asked about the identity of the correctional officer he saw strike Lamour.

Q. Can you tell us the name of the guard who was involved in the Lamour incident you have described for us?

A. I can, but I would rather not. . . . In any event, the man is no longer with the institution.

Lamour was interviewed and he referred to an incident that occurred when he first entered the jail (September 21, 1973). He made no mention of the episode witnessed by Father Callahan. This is in keeping with Father Callahan's observation that Lamour was under heavy sedation at the time of the 1974 assault.

Father Callahan's evidence was that the correctional officer involved in the episode he had witnessed was no longer employed at the Toronto Jail. Lamour positively identified the correctional officer in the September episode as C.O.2 William Paul Stafford. The conclusion I have come to is that these were two separate incidents. One of them involved a former unnamed correctional officer. Father Callahan's non-disclosure of the name was respected by reason of his then position as jail chaplain, and the necessity for him to have the confidence of the jail staff. Since the officer was no longer employed at the jail there was no reason for forcing the issue of identity at that time. The subsequent illness and retirement of Father Callahan explains why the Commission's investigators did not pressure him at a later date on the subject of identity.

## FIRST ALLEGATION

Lamour's statement about what he said occurred read in part as follows:

I had put my baby dolls on and was going into 3 cell when this guard said to me, "Why did you kill that little boy?" He then gave me a judo chop to the neck. I didn't go down, but I seen a lot of stars. When I asked this guard why he hit me, he said, "You make me sick, get out of my sight." This was the only time that I was hit while I was in the jail. I never gave the guards any trouble. They all treated me real good except that one. I have looked through the book of photos and the guard that hit me is on page 11, photo 11 [C.O.2 William Stafford]. I won't ever forget his face.



In reply to the above allegation, Stafford said:

I recall inmate John Lamour as he was in the Don Jail, I would say about nine months.

I don't recall taking him to the 2B segregation area, but I have signed the book, so I must have taken him up the first day he came in.

During Lamour's stay in the Toronto Jail, I worked the exercise yard and I took Lamour for his exercise while he was in 1A hospital on a regular basis.

As far as I recall, Lamour went into the segregation cell without incident, other than the fact that he was slow to move.

He was that type of person.

Two other correctional officers, C.O.2 Thomas Davey and C.O.2 Frank Morris, both denied seeing any assault on Lamour while they were on duty in the segregation area.

Is the statement of Stafford weak as against the definite detailed statement of Lamour? This was not the only occasion on which Stafford appeared in the role of a "physical moralizer". To his credit, there were times when he appeared as an exemplary correctional officer. When he did not, as here, did the fault lie in part with his insufficient understanding of the true role of a correctional officer? It was not his duty to pass judgment on an inmate or punish him, no matter how reprehensible his crime. It was his duty to ensure that, when an inmate, because of the nature of his crime, was placed in "protective custody", he was in fact, protected, not only from other inmates but also from his "protectors". This last duty requires a high standard of professionalism in a correctional officer, as well as considerable self-control. This lesson must not only be taught in initial training but also stressed in refresher courses.

## SECOND ALLEGATION

This matter has been reviewed fully above. I unhesitatingly accept Father Callahan's evidence that Lamour was assaulted as alleged.

Former Superintendent Whitehead was interviewed by one of the Commission's investigators in September 1976 – some 2½ years after the incident. Referring to Lamour as well as to Finlayson, Mr. Whitehead stated:

I cannot specifically recall Father Callahan speaking to me about either of these inmates.

I do recall both inmates quite well, they were at the jail for some time and because of the crimes they were arrested for, they had to be in segregation at all times . . .

During the years I had many dealings with Father Callahan, but I cannot recall any specific incident. He may well have told me about this incident and

if he did, the matter would have been handled or dealt with at the time.

It is recommended that in future where allegations of assault are reported by chaplains, medical or nursing personnel, social service workers, or volunteers that a record, fully documented as to names, dates, and particulars be kept for future reference if necessary. The investigation and the action taken should also be noted. Indeed, this procedure should be maintained no matter what the source of the allegation. It could be an inmate, a visitor, a lawyer, or even another correctional officer. If the suggestion for a Toronto Jail Council is adopted such information should be passed on to the council as early as possible. The area or district Ministry office should also be notified.

# The Lake Allegation

## *Exhibits 597A-Z*

Stafford Marvel Lake, also known as Leon Albert Stevens, was born in Nova Scotia. At the time of the assault he was alleging (August 2, 1974) he was 25 years of age. His record dated back to age 16 and was primarily one of theft, breaking and entering, and possession of stolen property. It did, however, include three separate convictions for escaping lawful custody and one for attempted escape. These latter convictions are relevant to an understanding of this incident.

Lake had been arrested by the Peel Regional Police and placed in the Brampton Jail. That building, similar to the old section of the Toronto Jail, was built over 100 years ago. The Assistant Superintendent of the jail at Brampton at the time was Alexander John Lochhead. Lochhead is mentioned elsewhere in this report, having been employed at the Toronto Jail as a correctional officer until October 1973, when he was promoted to C.O.5 and transferred to Brampton.

Lochhead stated that he was advised by the Peel Regional Police "that Lake had previously escaped from a jail on the east coast and that he had hit a guard on the head with an iron bar". He further said that, since Lake was known to have escaped from other jails, he was considered to be a security risk. It was therefore decided to transfer him from the smaller Brampton Jail to the Toronto Jail. Accordingly, Lake was placed in handcuffs and leg irons and, under escort of Lochhead and C.O.2 George A. Ching, was driven the 30 miles to the Toronto Jail.

When they arrived at the Toronto Jail, a police wagon was blocking the

entrance to the sallyport, and rather than wait with their prisoner until they could drive into the sallyport, they removed Lake's leg irons and started to walk him into the jail.

Lake escaped from their custody and after a *Keystone Cops* chase in which other correctional officers, Metropolitan Toronto Police, and a civilian were involved, Lake was captured and brought back to the Toronto Jail.

Lake alleged that on the way back he was punched about the head by Lochhead, punched and kicked by other correctional officers in the "garage" (sallyport), judo-chopped in the neck and subjected to "heavy blows to the abdomen" while in the reception area, punched again in the head by Lochhead, and then taken to segregation. The allegations listed are a compilation of those contained in a letter Lake wrote to the Commission and in a statement he gave to the Commission investigators.

There were five entries in August alone in Lake's medical status summary. These were on the day he entered the Toronto Jail (August 2, 1974) as well as on August 9, 15, 19, and 23. In none of them was there any decipherable complaint of injury or mention of injury.

The same appeared true of 15 further entries, going through to November 15, 1974, with the exception of an entry on October 22, which stated, in part, "Left lower leg - thrombosis - painful." There is nothing to indicate how long this condition had existed, nor whether it was traumatic in origin. In general, the main complaints were psoriasis, acid indigestion, and a nervous stomach.

A note of October 11, 1974, mentioned "anxiety state". This was repeated by another doctor four days later with the further comment, "many problems and worries - demanding - aggressive appearance".

I therefore conclude that although Lake had many opportunities to complain of the physical treatment he alleged he received on the day of his transfer to the Toronto Jail, he did not do so. Also, one would have expected that if he had been assaulted in the manner he alleged, some external and objective evidence would have been seen by the doctors. Further on the matter of credibility, Lake stated that he received no medical attention in the two weeks he was in segregation. The medical records indicate that he was seen three times during this period and medication was indeed prescribed, some of it on a daily basis.

Statements were obtained from 14 correctional officers, 12 on the staff of the Toronto Jail, and from Lochhead and Ching at the Brampton Jail. All denied any assault on Lake. This, of itself, is not conclusive. Escapes from custody are considered serious. Besides causing an embarrassing situation to Ching, and particularly to Lochhead, an Assistant Superintendent, Ching had been pushed by Lake and Lochhead had "banged his knee" and "exhausted" himself in the chase. Lake might not have been treated gently. Lochhead admitted placing Lake in a headlock on his capture.

C.O.5 Arthur James Kennedy was in the vehicle that was used to take Lake back to the Toronto Jail after his escape attempt. Kennedy said that Lake, on several occasions, raised his hands towards Lochhead's face as if to strike him. "I pushed him [Lake] over against the left side of the truck to control him and prevent injury to Mr. Lochhead." These two actions were

clearly justifiable.

At the time of sending his letter to the Commission, Lake enclosed a "brief". It dealt chiefly with general inmate-correctional officer problems, but a postscript mentioned "two persons [who] observed his [Lake's] alleged beating". One was Melvin Jones, the other was David Young. The Commission investigators were unable to locate Jones. As for Young, he was found and a statement was obtained from him which read, in part, as follows:

In regards to Mr. Lake. I was in the Brampton Jail from the end of June 1974 to September 3, 1974. I don't remember the date but one day at the Brampton Jail I met Mr. Lake and he told me that he had been beaten up by guards at the Don Jail.

Mr. Lake had a black eye, bruises on his face and was limping. Like I said I can't remember the date, but it was in August or July of 1974, that I seen Lake.

That's all I can say. I would like to say that things have changed at the Don since 1974, and all for the better. The guards are human now and we can talk to them. Even the food is good.

As for Young's last three gratuitous sentences, the observation is of course a subjective one. We do not know how much our hearings and the publicity given to this Commission may have prompted Young to mention improvements. If there was an improvement, undoubtedly credit was also due to the staff, the administration, and the Ministry. As for the observation about the food, if Young thought the surroundings had improved, the food would seem to taste better. This even applies to restaurants. With only a few exceptions, did we hear of any complaints about the quality or quantity of the food. The only real problem was the serving of hot meals in the old section of the jail, where food trays had to be carried individually for some considerable distance from the kitchen, which was located in the new building.

As for Young's statement about Lake, Young said that he was in the Brampton Jail from the end of June 1974 to September 3, 1974. The records of the Brampton Jail were searched and they did not show Young as an inmate during that period. Lake was transferred from the Brampton Jail to the Toronto Jail on August 2, 1974. On several occasions after that he was required to make court appearances in Peel with reference to remands on separate charges. A search of the Toronto Jail records showed that Lake went to court on August 3, 6, 7, 13, 14, 20, 22, 28, and 30, and on September 4, 6, 11, 13, 18, 20, 25, and 27.

It is unlikely that Lake was placed in the Brampton Jail before or after these court attendances. On the off chance, however, that this happened, an additional search was made at the Brampton Jail. There was no record of Lake having been there, even for a short period, on any of the dates mentioned. Further, Ching, the correctional officer involved in Lake's August 2, 1974, escape attempt, stated when interviewed that he did not recall Lake returning to the Brampton Jail. I therefore cannot accept Young's evidence that he saw Lake at the Brampton Jail during the times he mentioned. *A fortiori*, he could not have made the observations he claimed he did. It is hoped that Young's opinion of conditions at the Toronto Jail was more



reliable than his evidence about Lake.

There may have been a motive for the use of excessive force against Lake following his abortive escape, but, while motivation may be of assistance in weighing evidence, it cannot be used in substantiation thereof. I therefore find Lake's statement to be uncorroborated, and wanting as far as the proving of excessive use of force is concerned.

# The Caccia Allegation

## *Exhibits 598A-F and 598X and Y*

Carl Caccia wrote to the Commission on November 1, 1974. He was interviewed by one of the Commission investigators and elaborated on his complaint.

Caccia stated that on August 8, 1974, he was “picked up at night for a routine check by police. They found out that I owed some money for parking tickets.” It is probable that a warrant, or warrants, had been issued as a result of his non-attendance in court in connection with summonses issued to him and that he was apprehended on the warrant or warrants.

The usual procedure is that a tag or ticket is issued for a parking offence. This may be paid out of court. If the fine is not paid, the person who incurred it will be notified, by summons, of a court hearing where he may be heard. Not attending before the designated court may result in a re-issuing of the summons to appear. Whether or not the summons is re-issued, the court may order a bench warrant for the arrest of the accused person for his non-attendance in court. The police are advised of the warrant. In Caccia’s case, a police officer on patrol may have recognized Caccia’s motor vehicle licence number and brought him into the police station because of the outstanding warrant or warrants for arrest. Warrants for arrest are of course issued for non-attendance in court on charges other than parking tickets. Usually the charge is a more serious one, but the warrant can arise in the above circumstances for non-payment of parking tickets and subsequent non-attendance in court.

Caccia was not unfamiliar with the warrant procedure. In his statement

he said that he was born in 1945 and had lived in Canada since 1967. In March 1969 and again in 1970 he had been arrested on warrants arising from his disregard of parking tickets and for his subsequent disregard for his required court attendance.

Caccia, relating the August 8, 1974, arrest, said that at the police station he was advised that he owed money for parking tickets. He was lodged in the station overnight and the following morning was transferred to the Toronto Jail. He stated that as he had been going to a meeting the previous night he was "all dressed up".

In the reception area at the jail, Caccia said, he was told by C.O.2 John Michael Ferguson to undress, and when he asked if he had to be in the nude, he claims that he was told "yes" in a very strong and fierce voice. He said that he was then told to take everything out of his pockets and when he asked if this also meant out of the jacket which he had already taken off, he alleged that Ferguson grabbed his face with an open hand and told him to keep his "mouth shut". Caccia said, "I didn't understand what he meant. He then threw me against the boards or wall of the section, slamming my head against the wall and punching me in the upper body, resulting in bruises. A few seconds later, another guard, hearing the first guard yelling and making noises, joined him and tried to kick me in my lower abdomen." The second officer then left and Ferguson then went through his pockets, throwing some of his personal effects in the garbage, "like combs, personal phone numbers, pencils, pens, and so on".

Caccia alleged that as a result of his assault he had bruises on his arm and jaw. He was "bailed out" the next day, when probably his outstanding fines were also paid. At that time he must have had an opportunity to report the assault and confirm it with an independent medical examination. He did not mention doing either. One would have to conclude that, if there was an assault, it was not of any significant severity. This, of course, does not excuse even a "minor assault", if such was administered to Caccia. A search is necessary for everyone admitted to the jail as an inmate, but no matter how aggravating he may have seemed to the searching correctional officer there could be no excuse for throwing away Caccia's personal effects if this was in fact done.

There were three other matters related by Caccia with reference to his August 1974 jailing. One was that while he was in the reception area one of the correctional officers is alleged to have said to the police that instead of three days, Caccia should stay in jail at least a few weeks because of the large number of unpaid parking tickets he had. This, of course, would only be by way of comment, for if he was lodged in custody he had to be brought before a justice of the peace or a court within three days on a detention hearing. Meanwhile he could be, as he was, admitted to bail. By mentioning this, Caccia no doubt intended to convey an impression of the hostility that was evidenced against him. If this was true, then the correctional officer was exceeding his custodial duty and acting other than in an objective and professional manner.

The second matter raised by Caccia was that he was refused a request to make a telephone call. One can understand the desire to contact family,

friends, or a lawyer, particularly when a person unexpectedly finds himself in jail. This has been commented on elsewhere and in the recommendations contained in this report.

The third matter referred to by Caccia was that when he was released the next day he overheard two other correctional officers talking about Ferguson in a derogatory manner. This was not confirmed. There was nothing in Ferguson's appraisal record to indicate any problem or failure by him to perform at an acceptable level.

Caccia stated that he could identify the other correctional officers. Apparently it was intended that he should do this upon his return to Toronto after a short absence. He undertook to notify the Commission investigators of a new address, but he did not do so. Attempts by the investigators to contact him proved fruitless.

Ferguson was interviewed and a statement obtained. He said that he recalled neither the inmate nor any similar incident. He said that he would not throw away an inmate's personal effects, other than a comb "if it was dirty". In that event, he said, he would issue a new comb to the inmate. Caccia stated that Ferguson was wearing a "white lab" coat, but this was denied by Ferguson. Evidence given elsewhere in the hearings indicated that such coats were not used in 1974. Ironically, the advantage of using such coats is discussed elsewhere in this report.

The Caccia incidents show us an inmate at one end of the scale – a parking ticket violator. At the other end of the scale are those convicted of capital murder. It also reminds us that even for parking ticket violators the reception area can be a source of trouble and tension. In a training program Caccia's complaints should be studied. Whether true or not, they should serve as a lesson on how a correctional officer should *not* behave, even when there is provocation.

I consider that Caccia was treated in a manner other than courteous. Purposely or inadvertently, he tried the patience of the correctional officer who was searching him. I believe some force was used on him, but of a minor nature. Ferguson's denial, and Caccia's refusal to contact the Commission investigators again when he had been asked to do so, leaves the identification of Ferguson in doubt, and he is therefore exonerated.

# The Machan Allegation

## *Exhibits 599A-1*

The complaint of David Mark Machan came to the attention of the Commission through inmate Nathan Terrence Somerton, who was also the subject of a complaint referred to elsewhere in this report. Machan had requested Somerton to inform the Commission that he had been assaulted by C.O.2 William Paul Stafford.

Machan was born in western Canada in 1954. He stated that he had the equivalent of a B.A. degree in Computer Science. He also had a police record dating back to 1972.

On being interviewed by one of the Commission investigators, Machan stated, in part, as follows:

On Wednesday, April 2nd, 1975, at approximately 3.30 p.m., I was lying on a stretcher in surgery. Stafford and another guard came into surgery. The other guard asked me if I could walk to the taxi – I replied, “I probably can, but not too easily.” Stafford said, “There’s nothing wrong with the [deletion] he can walk.” The other guard helped me to stand up. I was having a lot of difficulty and pain at this time. . . . We started walking towards the dome. I was moving too slow for Stafford, so he shoved me forward by pushing on my shoulders. He was still cursing at this time. When we got into the dome Stafford told me to sit down on a bench. He was still cursing and calling me names . . . so I lost my cool and started calling him the same names as he was calling me. I was seated on the bench leaning forward, at this time, and Stafford threw his left arm around my neck and struck me a blow with his right fist, in the face. The blow caused a split on my lower lip.



Machan further related that on two separate occasions that day he reported the assault to two different “white shirts”. The first one “just turned away”, the second one “told me to forget about it”. Further, he said, he reported the incident to his lawyer. His lawyer, when interviewed, denied that it was reported to him and said that, if it had been, he “would have taken the appropriate action”. It is hoped that the lawyer would at least have notified the Superintendent.

As for Stafford, he gave the following statement to a Commission investigator.

I never encountered Machan until he was sitting in the dome and he was getting a little abusive and obnoxious. I started to talk to the guy and his reaction was sort of dumb insolence, which is a tough thing to handle with an inmate. There was about 3, 4, or 5 people around at this time – by this I am talking about jail personnel. I may have struck this guy, I don’t honestly remember. I may have smacked him in the side of the head and told him to smarten up – I just don’t know. I remember saying, “Come on, smarten up,” and that was it – finished, no more. I didn’t beat the [deletion] out of him or nothing like that.

Stafford was questioned about Machan’s allegation on April 10, 1975 when he gave evidence on the Somerton allegation. That was a week after the Machan incident. It will be useful to lead into the question with an excerpt from the transcript of evidence on the Somerton allegation, which arose from an occurrence on July 23, 1974.

MR. MCRAE. . . . the witness Allan King said that he saw you hitting Somerton as well.

STAFFORD. I don’t even remember hitting Somerton.

Q. You don’t even remember hitting Somerton?

A. No, sir.

Q. Could you have hit him without remembering?

A. I doubt that very much, sir.

Q. I beg your pardon?

A. I doubt that very much.

Q. Well, this is going back to last July, is it possible that you hit him without knowing?

A. I don’t remember hitting him, sir.

Q. Could you have hit him?

A. I think so – I don’t think I did though.

Q. Have you had a couple of problems recently at the jail?

A. What do you mean by problems, sir?

Q. Well, on April the 2nd, did you have something to do with an inmate David Mark Machan?

A. Yes.

Q. Pardon?

A. Yes.

Q. And did you hit Mr. Machan?

A. I believe I did, sir, yes.

Q. You believe you did. We had better find out about that. This is only April the 10th so it would be a week ago yesterday.

A. Yes, sir. . . .

Q. Where was Mr. Machan at that time?

A. He was sitting on the bench outside the sergeants' office. . . .

Q. And did you have an encounter with him?

A. I did.

Q. What was it about?

A. He was just being — using sort of dumb insolence, like, you know, I could get no co-operation out of him at all.

Q. What did you need co-operation from him for?

A. I was inquiring why he was here, what was happening, that was all.

Q. You were inquiring why he was sitting in the dome?

A. Yes, sir.

Q. What was his reaction to your inquiry?

A. Just being — never really answered me properly.

Q. Yes. Was he on his feet, standing up, when you talked to him?

A. No, still sitting.

Q. Did you hit him?

A. Yes, sir.

Q. Hit him on the side of the head?

A. I just, you know, gave him a glancing blow on the side of the head.

Q. Because of his insolence?

A. Yes, sir.

THE COMMISSIONER. You are demonstrating a backhand slap?

A. Yes, sir.

MR. MCRAE. He was still sitting when you did that?

A. Yes.

Q. He hadn't attacked you or anything?

A. Well, he just — you know —

Q. Other than being insolent, I mean.

A. That was it.

Q. Now do you feel you were justified in hitting someone even with a backhand who is insolent to you?

A. I didn't actually mean to hit — to hurt the man. I just mean to, you know, just give him a rap, that was all.

Q. That's what you did do?

A. Yes, sir.

Q. Did you make a report of that anywhere?

A. No, sir.

Q. How many times did you hit him?

A. Once.

From the above there is no other conclusion to be drawn than that Stafford struck an inmate who was ill, not in self-defence or during any struggle but merely because of pique. It may well be that Stafford did not intend to strike Machan as hard as he did. Also, from further questioning of Stafford, it

was clear that he did not consider the action he took against Machan or against another inmate, Green (a jab in the stomach), as being "violent". It would therefore appear that Stafford's justification in his own mind was one of degree rather than of kind.

The danger in this approach is that any striking of an inmate by a correctional officer could become the thin edge of the wedge. If tolerated at all, it could only lead to problems. How much force could be said to be acceptable? The door to abuse would be opened. It is difficult enough, when force is necessary, to decide how much is justified. But here there was no justification for *any* force, no matter how inconsequential, and a "blow in the face" causing a split lip, or even a "smack" to the side of the head, cannot be considered inconsequential. Even a modified version of Stafford's to "beat the [deletion] out of" an inmate is wrong.

Q. You have been a correctional officer for four years?

A. Yes, sir.

Q. Do you feel that using physical violence on an inmate like that is justified?

A. What is physical violence?

Q. Well in the case of Machan, giving him a backhand across the head while he was sitting on a stool just for being insolent to you and in the case of Green giving him a jab in the stomach while you are questioning him?

A. I don't think that's violent. It's physical, but the amount of physical violence used I don't think is or could be termed physical violence. It's not violence. I I just jabbed him in the stomach.

Stafford, in his oral testimony, gave his reason for questioning Machan, and I accept it as valid:

THE COMMISSIONER. With the Machan incident, he had apparently either been placed on that bench by some other correctional officer or told to go there by another correctional officer or was there as a result of something that happened before you came on shift?

A. Yes, sir.

Q. Why would it be then that you should inquire as to why he was sitting on the bench?

A. The 7 and 8 landing is rather a busy area working and you want to know who is about and where they are going and you want to know everything that is going on. It is just part of being on the job.

There is a further matter to consider and that is whether or not overwork was a contributing factor which lowered Stafford's tolerance to what he considered inmate provocation. Overwork and tension affect businessmen, housewives, industrial workers, and others besides correctional officers. The degree of effect varies with the individual. Stafford had been doing double-shift work, although the Machan incident occurred shortly after he had started work on his first shift of the day in question. He had stated in evidence, "I was tired. I hadn't been sleeping too well recently. I went to a double shift on Monday – Sunday had two hours sleep and Monday [had]

to go back to my shift again.”

The matter of overtime is considered elsewhere in this report. Stafford said that he had indicated to other officers that he was not receiving enough rest, but he had not communicated this to any senior officer. This he should have done. I do not sanction his withholding of such information, but it is understandable why a correctional officer, desiring the added income and maybe also wishing to “fill the gap” and pull his weight, would be reluctant to complain about lack of rest.

There is no doubt that unjustifiable force was used in this instance. In Mr. Carter’s written submission, he came close to acknowledging as much:

The question presenting itself is, is this a case where “a glancing blow”, any blow, was required. Correctional Officer Stafford was admittedly in an awkward position. It is important that respect, even if it is founded on fear of punishment, must be maintained vis-a-vis the custodial staff and the inmates. Perhaps this was a case where a different type of punishment should [have] been meted out. This is said having regard to the incident as related by Mr. Stafford. The inmate in this matter was probably suffering some discomfiture and it is respectfully submitted that in the light of all the circumstances a more reasoned response by Mr. Stafford would have been appropriate.

An even more disturbing aspect of Machan’s statement was the allegation that he complained to two senior officers and neither paid any heed. The recording of any and all complaints should be obligatory. This, no matter how frivolous the senior officer may consider the allegation to be. Complaints in written form should then be submitted by senior staff to the Superintendent. Indeed, if a complaint is made to a line officer about another line officer or about his own conduct, it should also be passed through senior officer channels to the Superintendent. It will be for the Superintendent to initiate the appropriate investigation. A report should then be made both to the Ministry’s area office and to the proposed Toronto Jail Council.

# The Langis Allegation

## *Exhibits 601A-L*

Gilles Albert Langis was born in Quebec City in 1943. He wrote two letters to the Commission and joined in a third letter signed by himself and others. In one of his letters he described himself as a person with “emotional and psychological problems” and “under the care of a doctor and also a psychiatrist”.

Langis was also interviewed by one of the Commission investigators and a statement was obtained from him. His record consisted of a number of convictions at Toronto from 1962 to 1975. Assault and theft-related offences made up the major part of his record. He was also a known drug user. In one of his letters, he made reference to being “in and out” of the Toronto Jail “for the past 15 years”.

It is proposed here to refer to an alleged assault against Langis “in the latter part of September 1970”. Langis stated that, on that occasion, he was taken out of 11 hospital dormitory at about 12:30 a.m. by C.O.6 Paul Joseph Mulhern (later an Assistant Superintendent). He said that Mulhern, in company with six other correctional officers, took him to the old segregation cells in the old building, and that he was “beaten” by them there. He acknowledged that he was removed from the hospital dormitory because he was “coming down off drugs, mainly speed. I got a little up tight that evening and was fighting with three other inmates.”

Continuing his complaint, he relates, in part:

The other guys were not taken to the “hole” – just me. Mr. Mulhern came up



to me when I was fighting and asked me if I was up tight and why. I explained to him that people were playing head games with me and I kept hearing voices of my family and to this day I still hear them. In fact my lawyer, David Cousins, is trying to have me put in 999 Queen Street or the Clarke Institute. I have also seen the psychiatrist re this matter at the jail. On the night I went to the old "hole" I was punched and kicked by Mr. Mulhern and the other six guards and called a "no good speed freak". I would say the beating took about 10 minutes. They just punched and kicked me, then I was thrown in the "hole" with no clothing on. Mr. Mulhern tried to have me take a Mandrix (sleeping pill) but I refused, as Mr. Mulhern does not have the authority to issue medication. I was left in the "hole" until 6:45 a.m. the next morning and then returned to 11 hospital. It's not 11 hospital anymore, it's just a corridor now. I was not taken to Superintendent's parade on this matter and feel it was not reported. The reason I feel it was not reported was because [of] the beating I received and that that area had been condemned. I was sore from this beating, but it was mostly in the stomach and didn't leave marks. I couldn't tell if the pain in my body was from the beating or from coming down off drugs. When you are coming down off drugs your whole body aches.

Mr. Mulhern was interviewed and his filed statement read as follows:

I have read the allegation made by inmate Langis in which he alleges that during the latter part of September of 1970, he was assaulted by myself and other unnamed officers. Inasmuch as I cannot recall any such incident taking place, I must by virtue of this fact deny any such participation, nor would I condone any such action on the part of any subordinate staff. I have known this inmate for some years now, and he is best described as a chronic complainer, who appears to be never satisfied with any service rendered him provided for by regulations. I have nothing further to state in this matter, except to say that during my tenure in this service, there have been occasions when an inmate's behaviour has been such that forcible removal from the general population has been necessary. At these times, every effort has been made to remove and restrain the subject with the minimum amount of force being used.

Mr. Carter's submission was that "due to the inmate's psychological state at the time (coming off drugs) as demonstrated by his lack of awareness as to the source of bodily discomfort, serious doubt should be cast upon the credibility of this person and his ability to perceive events as they actually occurred at that time".

It was therefore contended that Langis's allegation was unfounded. Certainly there was no witness or any documentary evidence to support it. Having also in mind Mr. Mulhern's statement, Langis's own admission, and his medical history, it would be wrong to make any positive finding against Mr. Mulhern with reference to the September 1970 allegation.

As to the proffered administration of a Mandrix sleeping pill, I see nothing wrong with the senior jail officer on duty offering, under certain circumstances, an oral tranquillizer or sleeping pill to a disturbed inmate. One

should, of course, make sure in doing so that the inmate is no longer under the effect of any other drug or intoxicant. This observation is in keeping with the opinion expressed by Dr. P. A. Dubelsten, the Toronto Jail doctor, in a memorandum on Langis to the Superintendent, dated August 9, 1973, and filed as part of the medical record. If there is any doubt or suspicion, a doctor should be consulted. This is another reason for having round-the-clock medical personnel in the Toronto Jail, with its large and sometimes troubled population.

As for the use of the old segregation cells in 1970, it would appear that at times these cells were used for short periods when the segregation cells in the new building were all occupied. According to Langis, he was kept in one of the old cells from 12:30 to 6:45 a.m. Confinement for that length of time in a condemned area was not justified. There was no documentary evidence concerning Langis's stay in the old segregation cells.

Other matters were referred to by Langis in his letters and statements. Some of these dealt with medical treatment received by himself and others. Satisfactory explanations were obtained in answer to these complaints. I do wish, however, to comment on one matter raised by Langis. This was a complaint that on one occasion, upon his return from court, he was transferred out of one of the corridors in the new building to a corridor in the old building. Langis said:

I tried to explain that I was just starting to overcome some of my problems, because the other inmates in 3C understand my problems and helped me whenever they could. But I was told by the Chief in charge it did not matter I was going to the old part of the jail. I then told him if I could not return to 3C that he could put me in the hole, and that I would go on a hunger strike. He told me to go right ahead, he couldn't care less. So I am writing this letter from the hole where I have commenced my hunger strike refusing to eat or drink any liquids until I am returned to my corridor.

It is, of course, necessary for the proper administration of a jail that those in charge have the right to allocate inmates to such corridors as they see fit. Classification of inmates is an important aspect of jail administration. Aside from punishment sanctions, I am satisfied that, when time and space permitted, an attempt was made to quarter inmates in the same classification categories in the same corridors. Unfortunately the fluid population and the overcrowding did not always permit this to be done. Then, too, there was not sufficient staff or time to ensure accurate classification. At times, one suspected, classification was done only in the simplest and most generalized way. Indeed, one of our recommendations is that the classification system be improved, but this will require both more experienced staff and more time. Qualified social workers, properly orientated and knowledgeable in the practical aspect of jails, would be of great help. Failing this, experienced correctional officers, familiar with at least the elements of social work, should be employed for this important task.

Where possible, and as long as there is no security or behavioural risk, the wishes of inmates with definite views about corridor accommodation

should be considered. Emotionally disturbed inmates such as Langis should be listened to with some empathy, rather than treated with a "take it or leave it" attitude. The effect on them of reallocation may be somewhat akin to the effect on an emotionally disturbed student of having to change schools. Langis apparently needed the emotional support of those he had begun to relate with. Once again, shortages of time and staff, and overcrowded conditions, might mitigate against compliance with such requests. But Langis's experience was not the only one of its kind described at our hearings. Insensitivity of this sort may be indicative of the general attitude of some correctional officers towards inmates and an explanation of some tensions that might otherwise be avoided.

# The Mulvihill Allegation

## *Exhibits 602A-T, 602X, and 602X<sub>2</sub>*

The case involving James Brady Mulvihill, aged 20, came before the Commission by way of a letter dated December 13, 1974, from Mulvihill's cell-mate in Corridor 5. This, together with a supplementary letter, prompted the Commission's investigations, during which a statement was obtained from Mulvihill. The gist of the complaint contained in the letter and in the statement was that, on December 12, 1974, Mulvihill was taken from the corridor after lockup by C.O.1 James Cluny King and C.O.1 Alexander Emmanuel Sills, and then taken into a nearby broom closet where he was assaulted by King.

It would appear from the exhibits that some inmates in the corridor were making barnyard animal noises after "lights out". King asked them to stop it. They did not. These facts do not appear to be in dispute. What is in dispute is whether it was Mulvihill or some other inmate who made the additional noises which King attributed to Mulvihill. At any rate, according to Mulvihill, when they were standing on the landing outside Corridor 5 King asked Mulvihill if he thought that he (Mulvihill) was "some kind of a 'smart alec' or words to that effect. I did not reply."

Mulvihill said that there was further questioning, which he answered, and then King "walked over to the broom closet and flicked the light switch on".

Mulvihill continued:

I was pushed into the broom closet by Mr. King. He had hold of the front of my shirt at this time. He again referred to me as a "smart alec". I tripped over

a wash bucket and fell face down over a wash stand and Mr. King started to punch me in the back. I was punched four or five times at this moment. I turned around with my arms covering my chest. Mr. King continued to punch me but most of the blows were caught on my arms. Mr. Sills then told Mr. King, "That's enough King." Mr. King then stopped punching me. We left the closet and I walked over to the stairs. As I reached the top of the stairs, Mr. King gave me a push from behind. I had my arm around the corner post at this time and this is the only thing which saved me from falling down the stairs. I then ran down the stairs so I wouldn't be pushed down. When I got to the bottom of the stairs, I walked out into the "dome".

Mulvihill described how another correctional officer who was then in the rotunda area stuck out his foot and attempted to trip him. This correctional officer was C.O.2 Joseph Robert Peake. In his statement, Peake admitted his presence but not the attempted trip.

Mulvihill then related that a number of correctional officers gathered around and started to question him, as to whether he was the ringleader.

Mr. Dowhey [C.O.2 Edward Dowhey], another guard, said "Give him a letter to write out for the Commission," then we will take him downstairs and give him a [deletion] kicking (or words to that effect). He then said, "I am going up on Monday on an assault charge, so one more won't hurt."

Subsequently, Mulvihill said, C.O.5 James Swan arrived and he was put on charge and taken to segregation. King's detail of the misconduct read as follows:

After repeated warnings to make less noise between the period from 9:30 p.m. and 9:50 p.m. this inmate kept making noises and remarks like Scottish goof. I positioned myself outside his cell for a period of 5 minutes or more during which time the sounds continued. I then stepped up to the door and caught the above inmate in the act of making the noises. I then asked Mr. Sills who was standing at the grille to open the cell door. I then removed the inmate and referred him to Mr. Swan down in the dome for further action.

The punishment meted out to Mulvihill was five days in segregation with regular diet. In any event, Mulvihill was released after three days. On being returned to his corridor, Mulvihill related,

One of the inmates told me at this time that one of them had written a letter and all the guys had signed it, and forwarded the letter to the Commission. I had no trouble at all with the guards after this. . . . I have never had any previous trouble before this occurrence.

Mulvihill said he made no complaint of the alleged assault to either Swan or the Superintendent "because I did not want to cause a hassle. Besides this, I had no bruises to prove the assault."



In their letter, the inmates of Corridor 5 mentioned that when Mulvihill was in the broom closet he cried out, "Leave me alone, leave me alone." In the subsequent letter, however, they stated that, being locked up in the corridor cells, they did not see any assault, but only saw Mulvihill pushed into the broom closet, and then heard "the sounds of a struggle".

Many of these inmates gave subsequent individual statements. These were primarily to the effect that the noise they heard coming from the broom closet was that of buckets and brooms being knocked around. They seemed to feel that, since Mulvihill was not the only one who had been making the earlier animal noises, he had been wrongly singled out for punishment. One of the inmates, whose signature was on the first letter, said that he had signed it "to keep pressure off as there were twenty other guys in there". He referred to Mulvihill as "very mouthy and inclined to be a trouble-maker".

In his statement, King said he had nothing to add to his Misconduct Report. That did not specifically answer Mulvihill's assault allegation, or the claim of the other inmates that Mulvihill was taken into the broom closet. Sills in his statement also avoided a direct denial that Mulvihill was taken to the broom closet. Accordingly, the weight of evidence must be that Mulvihill was taken into the broom closet prior to being brought before Swan. There being no suggestion by either King or Sills that there was only a "talking to" or a "pretended or sham assault" in the broom closet, as had been described in another incident, one must conclude that there was an assault by King on Mulvihill. The extent of that assault, on the basis of Mulvihill's own statement, was not severe — "I had no bruises."

Sound carries easily at night from one corridor to another. The inmates had been shouting noisily for about half an hour, according to Sills, and they were disturbing other inmates who wished to go to sleep.

Unfortunately there is insufficient physical activity in the jail to siphon off the excess energy of young inmates, and the actions of Mulvihill and others in Corridor 5 that evening, although not to be condoned, can be easily understood. King was right in attempting to enforce order in the corridor after "lights out". He was also justified in bringing Mulvihill before Swan. Nor should there be any criticism with reference to the charging of Mulvihill and his subsequent punishment. It was the stop in the broom closet and what occurred during it that was censurable as unjustifiable use of force. As for the statement Mulvihill attributed to Dowhey, that correctional officer commented on it as follows:

The inmate was with Joseph Peake and James King at this time. I just stood by and listened in on the conversation to find what the problem was. The inmate admitted to swearing and whistling. At this time I said, "You'll probably want to write to the Commission about not letting you whistle and swear in the corridor, when everyone else is trying to sleep." I then said, "I'll be going up there Monday or Tuesday, so it will be convenient for you." I said this to the inmate sarcastically.

I refrain from commenting on either version.

## The Ostrowski Allegation

### *Exhibits 603A-M*

The incident involving Zenek Ostrowski, a 17-year-old inmate, occurred in the second half of June 1974. It came to the attention of the Commission by way of another inmate, Allan Francis King, who gave evidence in the Frost allegation. King worked as corridor man. This permitted him to be out of his corridor. He related that, on the day in question, he was outside Corridor 8 when Ostrowski came up from the shower area, crying and with his face swollen.

King said he asked Ostrowski what had happened and was told that one of the correctional officers in the admitting area gave him a punch in the face. The officer against whom the complaint was made was identified as C.O.2 Joseph Furman. King said he went down to the admitting area and asked Furman why he had hit Ostrowski. King described Ostrowski as "just a young kid from the street". In his oral evidence, King stated that Furman "told me to mind my own business". In a separate statement obtained by one of the Commission investigators, King repeated this and also added that Furman had said that "it was for something that had happened at [the] City Hall [courts]".

Ostrowski, in his statement, said that upon returning from court one day he, with other inmates, was placed in the holding cell. They then waited for their names to be called, for processing. He said that when his name was called by one officer, Furman spoke up, saying that he would take Ostrowski. They then switched papers and Ostrowski went with Furman.

He took me to the search area, where I stripped down, and he checked my clothing. I signed in, in the big book, and went to pick up my clothes, and as I did so he said, "Put them down." I said, "Why?" and he said, "Never mind, just put them down." I put them down and he said, "Stand straight," which I did.

Ostrowski said that Furman asked him why he swore at a police officer when he was in the old City Hall courts bullpen area. Ostrowski denied any knowledge of what Furman was talking about. He said that Furman then punched him in the chest, whereupon Ostrowski inquired, "What's that for?" He stated that Furman repeated a couple of times, "Do you remember at City Hall?" Ostrowski alleged that Furman then grabbed him by the hair with one hand and punched him with the other.

I kept backing up and into another little room, just before you get to the search area. . . . He grabbed my hair and banged my head on the wall, and said, "Don't swear at the Police Officers." I later said, "What's he to you?" and he said it was his father or uncle, I'm not sure. I fell down during the assault and he said to get up, but I wouldn't because I figured he was going to hit me some more. He punched me in the face, but I was covering up with my arms and the blows struck my arms. He kicked me two or three times in the side and arms. It was my left side first, then I rolled over and he kicked my right side and my right arm. I got up and he grabbed my hair and that's when he banged my head on the wall. There were two or three other guards who came and watched, they didn't touch me. He stopped hitting me and he pushed me toward the showers and said, "Go get your clothes and have a shower." My nose and mouth were bleeding and someone handed me a face cloth. I went into the shower and got cleaned up and the bleeding stopped.

Ostrowski said he did not report the matter to any senior officer but did report it to his lawyer. Ostrowski's lawyer was interviewed and stated, in part:

I recall him [Ostrowski] telling me that he had been pushed around a bit in the jail, and I could see a few marks on him, but nothing unusual and nothing too severe. I advised him of the courses he could take if he wished to lay charges, but I advised against charges and told him that in jail you have to give and take and that he would have to change his attitude while in custody. The end result was that I advised him to forget about it.

It is unfortunate that some lawyers have taken the "forget it" or "don't rock the boat" attitude with reference to their clients' complaints of assault. It is also unfortunate that some members of the public, including this lawyer, should think that assaults are part of the "give and take" of custodial incarceration. The best way to counteract that type of thinking is to have the recipients of such information realize that they have a duty to pass it on to the jail Superintendent for his investigation. Possibly if they knew that the matter would be investigated in an objective manner and that no physical reprisal

would be taken against the complaining inmate they might be less reluctant to advise the Superintendent.

The Superintendent should, in all cases of alleged assault against inmates, report to the Ministry's area office and also to the proposed Toronto Jail Council. Where the complaint is proven groundless, by reason of exaggeration or fabrication, appropriate punishment, but not physical retribution, should be assessed against the inmate. If, on the other hand, the complaint is proven valid then there should be disciplinary action against the officer. In either event, the matter should not just be brushed under the carpets of doubt and suspicion.

Other filed statements indicated that C.O.2 Joseph Furman had a brother, John Furman, who was an officer of the Metropolitan Toronto Police. John Furman had identified Ostrowski in the City Hall cells as the person whom he had witnessed in a milk store holdup. He and another police officer had stated that Ostrowski had sworn at him (John Furman), calling him a "rotten fink" and threatening to "get him". Ostrowski denied this, saying that it was the other inmates in the City Hall bullpen who had sworn at the police officer. Ostrowski's lawyer, in his statement, referred to his client in a manner that would indicate that Ostrowski was a person who might well have sworn at the police. John Furman told his brother Joseph about the swearing. Joseph Furman's statement contained the following:

After having viewed a photograph of Ostrowski, I vaguely remember him being an inmate at Toronto Jail. I did work in the showers sometime during the summer of 1974. I reside with my brother who is a police officer. One evening during the summer while we were having a supper party with friends, my brother mentioned an incident that had happened in the court cells involving an accused named Ostrowski. A few days later, while I was working in the search area, I searched an inmate named Ostrowski. I mentioned to Ostrowski the incident at the Old City Hall cells. I told him that that type of antagonistic attitude was not beneficial to himself. (I was referring to him swearing at police officers in the Old City Hall cells.) He said words to the effect, "Well, what's it to you?" I told him I knew the policeman. I did not tell him that the police officer was my brother because I made a point of not letting the inmates know that my brother was a police officer. I don't know how Ostrowski would know the police officer was a relative unless he overheard the name at the court cells or at his trial. He could have heard my name at the jail at any time.

Joseph Furman went on to say that, while discussing the incident that occurred at the Old City Hall, Ostrowski spoke of his brother in a derogatory and insulting way.

At this point I was angered by his remarks and attitude. I yelled at him and told him what I thought of him. I picked up his clothes off the hook and threw them at him and told him to go to showers. He went to showers.

There is no doubt in my mind that Joseph Furman either lost his temper and struck Ostrowski or saw an opportunity to even a family score and



deliberately struck Ostrowski. I do not accept his evidence that he did no more than yell at the inmate and throw his clothes at him. Of the two alternatives, the deliberate act would be the more serious. It might show a general malaise in the jail, if Furman considered such conduct by correctional staff something that they could "get away with". In a subsequent statement, Furman, who held a university degree, explained that one of the reasons why he quit working at the Toronto Jail was because he was finding that he was becoming "colder, more callous and more uninvolved".

It is somewhat ironical that the offence with reference to which John Furman had identified Ostrowski was one that he was subsequently found not guilty of. The court's finding may have been based on other factors, but that was the "identification" that led to the chain of events that culminated in the confrontation between Joseph Furman and Ostrowski. With reference to that charge, Ostrowski was a "remand inmate". However, coincidentally, he was also serving a sentence at the time on another charge. Had this not been so, and had he not been able to obtain bail on the milk-store holdup charge, there would have been the anomalous situation of a man found innocent being held in custody, and, while in custody and still presumed innocent at law, being assaulted by a custodial officer.

King, in his statement, referred to some "ready discipline", which he differentiated from being "beat up". Nevertheless, technically, the matter was one of assault and contrary to the Ministry's directive on the treatment of inmates. King stated:

I have never been in segregation in the Don Jail nor have I been beat up. I have been hassled on a few occasions, such as when we have been fooling around, and they call you up to the front, call you out, give you a backhander and tell you to behave. This could have happened on maybe three or four times.

If King or other inmates had been given a choice, they might have chosen this treatment over some other form of discipline or punishment. For reasons mentioned elsewhere, it cannot be considered acceptable.



# The Ramsay Allegations

*Exhibits 604A-R, 604X<sub>1</sub>, X<sub>2</sub>, Y<sub>1</sub> and Y<sub>2</sub>, and 604AA-TT*

Carl Joseph Ramsay wrote to the Commission on November 20, 1974, from Collins Bay Penitentiary, where he was serving a 10-year sentence. Subsequently his sentence was reduced by the Ontario Court of Appeal to six years. The initial sentence was pronounced May 25, 1973. The charge, originally one of attempted murder, was reduced to one of wounding. I mention these matters as they are relevant to an understanding of the great tensions experienced by some inmates while awaiting trial and sentence, or shortly thereafter. The allegations contained in Ramsay's letter referred to two dates which have been ascertained as May 10 and May 12, 1973.

Ramsay, who was 30 years of age, was interviewed by Commission investigators. The statement obtained at that time was in more moderate language than his letter. The following account by Ramsay is taken from parts of each.

## FIRST ALLEGATION

The day after I was convicted on the wounding charge, I was in the Don Jail. I was placed in a different cell because I was awaiting sentence. My old cell

had been used, as I was late getting back from court. Due to being convicted and having my cell changed, I became a little upset. As a result, the second morning after my conviction I got into an argument with another inmate. It turned into a fist fight. The guard on the control centre tried to break it up by calling through the grille to "break it up". I ignored the guard and continued to fight. I picked up some juice (in glasses) and threw it at the guy I was fighting with and the guard. I also threw some around the corridor. . . . The guard must have called for assistance, because five or six guards arrived at the corridor. . . . The guards had a grey blanket. They circled me down near the shower. They threw the blanket over my head. I was then dragged out of the corridor. While being dragged, I felt my hair being pulled through the blanket and I was being punched and kicked on my back, sides and stomach. I was taken to the "hole" on the same landing. There was a guard who appeared to be in charge who told the other guards not to punch me in the head anymore. He then asked me to take my clothes off. When I refused, this guard ordered the others to rip them off, which they did. I was then thrown into the "hole" with no clothes on. Up until this point, I don't have too much beef with what had happened.

Ramsay stated that while he was in segregation a male nurse visited him. This nurse was identified as Joseph Lauwers. Ramsay stated he complained to the nurse about his treatment at the hands of the officers and was told "to shut up and take my pills". He also said that he asked to see the Superintendent and the jail psychiatrist, but to no avail. He accused Lauwers of using bad language. Lauwers denied this, and, having observed Lauwers and heard him giving oral evidence, I doubt that he used the language alleged.

As for his claim that he was not allowed to see the Superintendent and the jail psychiatrist, the log record indicated the Superintendent visited him at 8:42 a.m. and the Misconduct Report indicated a hearing at 8:55 a.m. Mr. Whitehead, instead of imposing a penalty, made the following entry on the Misconduct Report: "To see Medical Officer. ? Mental condition." Under the heading "Comments, if any" Mr. Whitehead wrote, "Has a history of unpredictable and violent actions."

According to the segregation log, Ramsay was seen by Dr. J. A. MacLennan at 1:05 p.m. At 1:45 Dr. MacLennan wrote: "Man examined in segregation area at request of Chief. He had been placed there because he went berserk. He was conscious, refused initially to answer any questions. Then stated that he didn't want a psychiatric exam. He appeared healthy. No treatment indicated at this time."

A medical note the following day, May 11, indicated the prescribing of tranquilizing medicine. It may be that Lauwers visited Ramsay the following day. If so, it was after the Superintendent's original visit and after the visit of Dr. MacLennan who, although not a psychiatrist, was one of the jail doctors. The practice of the Superintendent was to visit the segregation areas each day. Also, the medical records indicated subsequent visits by other doctors. On May 13, Dr. P. A. Dubelsten recorded the following: "Examined this inmate this A.M. - suffers from psychotic disorder. Involuntary admission form completed." On the same date, Ramsay was transferred to the

Ontario Hospital at Penetanguishene. On May 25, he was transferred back to the Toronto Jail. One month later (June 26, 1973) he was transferred to Kingston Penitentiary.

In his letter, Ramsay described part of the above episode as follows:

I got into a scuffle with another inmate. I was removed from the population by force and beaten severely by the "Goon Squad". This wasn't my first encounter with them. I had met them on previous stays at the "Don" but this was one of my worse beatings from them. This "squad", I might add, at this point, may change faces but their job is unchanged, and that is to beat inmates. This has been going on for years and years. On this particular meeting, I was coming down from drugs, I had just been convicted of wounding, and had offered no resistance whatsoever to the six (6) or more "officers" who wanted me put in the hole for causing (or being a part of) the disturbance.

Mentally, I was in poor shape and physically I was in bad shape. This is a brief "run-down" on what actually transpired: The "goons" were called to quell the disturbance of which I was a part. When they (the goons), surrounded me in the corridor, I offered no resistance. At least one of them carried a blanket, and it was thrown over my head. I was then kicked, punched, and dragged. I also had my hair pulled out (through the blanket covering me).

I was dragged to the "hole" where I was ordered to remove my clothing. By this time I was confused and frightened, and would not obey their order. A Lieutenant, who was present, ordered the "goons" to rip my clothing from my body (which they did). When I was nude, I was punched and kicked and thrown bodily into the "hole" cell. All the while, the same Lieutenant warned the "goons" against hitting me in the head where it would show.

A male nurse, employed by the "Don", came to my cell some time later that same day to see me and to give me some pills. I complained to him about my treatment at the hands of these "goons" but was told to "shut up and take your pills". I then asked to see the Superintendent, and was told to [deletion], by an employee of the "Don". I also requested to see Dr. Common and was told that he didn't want to see me. (Dr. Common is the jail's psychiatrist). I was at this time very distraught, confused, paranoid, and alone. No one to turn to with (1) my complaints of brutality, (2) my request to see the psychiatrist and (3) I needed medical attention.

In the letter Ramsay attributes the deleted answer to an "employee of the Don", who may or may not have been Lauwers. In his subsequent interview he attributed this remark unequivocally to Lauwers. I have already indicated that I accept Lauwers' denial on this point. It is more serious than just a matter of credibility, for the allegation implies an insensitivity and callousness on the part of the jail's nursing staff. This is harsh criticism. I find it unwarranted. In this case Ramsay's perceptiveness may well have been affected by his admitted anxiety and by what Dr. Dubelsten considered was "psychotic disorder". I find no justifiable complaint against the medical or nursing treatment afforded to Ramsay at the Toronto Jail during the referred to periods. Indeed the concern of one nurse, Jane Mannerholm, was expressed in an entry at 8:00 p.m. on May 11. It indicated that she tele-

phoned to one of the jail's doctors with reference to Ramsay refusing his medicine and being noisy. Her note concluded: "Dr. Wilson doesn't want to order any intra-muscular injection, only that we offer inmate his pills every time."

Statements were obtained from the correctional officers who were present. C.O.4 Lloyd Robinson, who held the rank of C.O.2 at that time, was the first officer involved. His statement reads as follows:

Carl Ramsay is a well-known inmate at the jail. On or around May 10, 1973, I was the officer in charge of 3A corridor. The first thing after breakfast, I took the medical request. During this time I heard a scuffle on the south side of 3A corridor. I went around to check what the noise was about and I found inmate Ramsay and Gordon West fighting in #7 cell. I ordered them to stop, twice, and they refused to do so.

Ramsay somehow or another became rather berserk and started throwing glasses containing tomato juice and cups of coffee at me.

C.O.2 Padraig Murphy, who was on duty on 3B landing, arrived at the corridor and he also ordered Ramsay to stop fighting and Ramsay refused to do so. He started throwing glasses of juice at Murphy.

West at this time walked away to the far end of the corridor.

Ramsay was ordered out of the corridor because of his attitude. He refused to come out. Lieutenant [C.O.5 Hugh] Nicholson, the i/c of the shift, was informed by phone as to what had taken place. He arrived at my corridor with other members of the staff. Ramsay still refused to come out, so Mr. Nicholson and other members went in after him.

He had armed himself with two drinking cups, one in each hand, shouting, "Come and get me." To avoid any injury, Mr. [C.O.2 Cardigan] Williams threw a blanket over Ramsay and the cups were removed from his hands. He put up a struggle and was restrained by the officers and taken to 3B segregation. I had no further dealings with this inmate.

Nicholson stated as follows:

I attended the corridor where Ramsay was in a fight with another inmate. The cells in this corridor were still open for cleaning up.

To show how berserk Ramsay was, the other inmates went into the cells on their own, usually they gather around to watch the fights.

I entered the corridor with several officers, as Ramsay took no notice of verbal directions. Ramsay charged directly at me with a broken cup in each hand, even though several officers were with me. A blanket was thrown over Ramsay's head and he was restrained with great difficulty. At this time, I thought the inmate that Ramsay had been fighting with was seriously injured, as he was covered with a great deal of blood. I went over to this inmate, by the name of West, and found he wasn't injured as seriously as I had thought.

Ramsay was already in segregation. I got the corridor quieted down and the inmates were happy with Ramsay out of the corridor.

C.O.2 Joseph Peake related, in part:



He was called to come out by a senior officer, which he refused to do. He told us that we would have to come in and get him. . . . The other inmate came out and Ramsay started to back off down the corridor, he was still holding the cups and was holding them so they could be used as weapons. When he could go no further he started waving the cups, still defying us to come and get him. When we were about 3 or 4 feet from him, a blanket was thrown at Ramsay's hands by one of the other guards. At this time, I jumped Ramsay and grabbed him by the hair and the other officers grabbed his arms. After a struggle we subdued Ramsay and he was taken to segregation. When we got to the segregation area, we let Ramsay go to take his clothes off. He told us to [deletion] and he wasn't taking his clothes off. We were given the order to strip him and he started to struggle violently. He was punching and kicking.

His clothes had to be ripped off him and he was put in the segregation cell naked, owing to his behaviour, which was completely unstable.

The statements of the other correctional officers contained observations to the effect that Ramsay appeared to be mentally unstable and violent at the time. "Ramsay was acting like a wild man."

As for Ramsay's allegation of a "goon squad", this is considered elsewhere in the report. In this instance, the safety of other inmates required Ramsay's removal from the corridor. He refused to leave the corridor when ordered by the two line officers, Robinson and Murphy, who were on duty in the area, and then a senior officer, Nicholson, arrived on the scene. The situation was one calling for a sufficient number of correctional officers to forcibly remove Ramsay. At such times it is advisable to have on hand those officers who, by experience and strength, can accomplish the task as quickly as possible and with the least force. Ramsay's use of broken cups as weapons posed a distinct physical threat to inmates as well as to correctional staff. Throwing a blanket over his hands or his head was proper procedure under the circumstances. Williams described this part of the incident:

If I remember correctly, the cups he had in his hands were broken off and he appeared to be going to use them as weapons. We went into the corridor and Ramsay backed down the corridor into the shower area. I grabbed a blanket out of a cell and threw it over his hands to cover the cups, and at this time we rushed him and overpowered him. . . . He was taken to segregation and his clothes had to be forcibly removed, as he refused to take them off. The other inmates made no comment, but appeared to be relieved that he was taken out of the corridor.

Under all the conditions of this incident, I consider that the actions of the correctional staff were warranted. Although force was admittedly used, it was no more than was necessary. It, therefore, was not excessive under the circumstances. As for the physical consequences to Ramsay, Dr. MacLennan's report, six and a half hours later, was negative as to appearance of injury or need for treatment.



## SECOND ALLEGATION

Piecing together the various log entries, it appears that at approximately 7:15 a.m. on May 10 Ramsay was admitted to 3B segregation. He remained there until 7:50 p.m. when he was transferred to the old segregation cells in the basement of the old building. He was kept there overnight.

Corridor 2 is in the old section of the jail and is the corridor nearest to the old segregation cells, which are referred to as O.S.C. (old segregation cells) or O.P.C. (old punishment cells). The count was indicated as being "17 + 1", which was interpreted as meaning 17 inmates in Corridor 2 cells and one inmate in the old segregation cells. During the 7:00 a.m.-3:00 p.m. and 3:00 p.m.-11:00 p.m. shifts on May 11, Ramsay's name appeared several times in the Corridor 2 log:

7:30 [a.m.] Ramsay refused breakfast in O.P.C.

10:47 Ramsay removed from O.S.C. to surgery [presumably this was for a medical examination].

11:00 Ramsay returned to O.S.C.

12:45 [p.m.] Visit to O.S.C. Ramsay OK.

2:25 Visit to O.S.C Ramsay OK.

4:00 Checked Ramsay in O.S.C. standing at grille.

4:35 Ramsay trans. from O.S.C. to 1B.

Ramsay was, then, transferred to 1B segregation cells in the new building at approximately 4:30 in the afternoon, on May 11. The Corridor 2 log indicated 4:35 and the 1B log indicated 4:25. It would be more understandable had these times been reversed. There is nothing significant in the discrepancy.

In the 1B segregation log, the following entries were relevant to Ramsay:

May 11

4:25 [p.m.] Carl Ramsay admitted – Watch.

7:05 Medication to Ramsay.

May 12

9:00 [a.m.] Carl Ramsay refused medication.

11:30 Carl Ramsay did not eat.

3:55 [p.m.] Ramsay "talking to himself".

5:00 Ramsay didn't eat.

5:40 Ramsay making threats to staff. Standing on bed & shouting.

6:15 Carl Ramsay out c/o Mr. Loughhead [Lochhead] & Mr. Peake.

The last entry did not indicate to where Ramsay was removed. The 1B segregation log did not indicate Ramsay's return to that segregation section at any time about that date. A search of the logs of other corridors did not indicate where Ramsay was taken to. In his letter and his statement Ramsay

alleged that he was once again removed to the old segregation cells. On further investigation this was confirmed by the statements of some of the correctional officers. The Corridor 2 log should have shown a change of count when Ramsay was placed in the old segregation area for the second time. A close inspection of the log indicated an erasure on May 12 at some time between 6:50 p.m. and 7:05 p.m. This erasure should not have been made and subsequent cell counts were in error in not setting out "18 + 1", instead of just "18". If there was a lack of oral communication there would be no way for a subsequent correctional officer coming to Corridor 2, on a change of shift, a relief, or an inspection, to know that there was an inmate in the old segregation cells who should be visited periodically.

It was assumed that the jail grapevine, which operates at jungle-drum speed, would have made this intelligence known to both officer and inmate. The reason for the "cover-up" was explained by C.O.2 Robert Fulton Driscoll:

I remember Ramsay was a very violent type of inmate although I was never personally involved with him at any time. I have also been shown the 2 Corridor Book and an entry at 7:05 p.m. signed by Mr. Appleton and part of his entry has been erased and I made another entry, "Patrol area and Count all quiet", over his signature. I would do that if Mr. Appleton showed Carl Ramsay as being in the Old Segregation Cells as they weren't supposed to be used as they were condemned.

Although the erasure was explained, it cannot be condoned. As was so well borne out in the Watergate cover-up, in order to protect the initial cover-up, subsequent cover-ups were necessary. Continuing to show the count as 18 resulted in a continuing form of cover-up each time a log entry was made until Ramsay was eventually released from the old segregation cells. Since his entry on May 12 was not shown, his release the following day was also not noted. Although the old segregation cells were said to have been condemned, evidence during our hearings indicated that they were used at times, albeit infrequently.

Usually this was for a short period, or when there was an emergency need for isolation and the new segregation cells were fully occupied, or, as in this case, when an inmate in the new segregation cells was disturbing the whole jail. In some instances the use of the old cells could be justified, on a balancing of the good of the jail and its population, as well as the necessity for discipline, against the comfort of a single inmate.

C.O.2 William James Boase, in commenting on Ramsay, said, "The old segregation cells were used only in extreme emergencies for a very violent belligerent type of inmate who disturbs the population at the jail, although I have no personal knowledge as to why this inmate was put in there."

If the need should ever arise in the future, it is recommended that the old segregation cells be used only on authority of the senior officer in the jail at that time and, if that officer is not the Superintendent, then the Superintendent should be notified as soon as conveniently possible. Further, full

documentation should be maintained while the inmate is in the old segregation cells, no matter for how brief a period. Finally, the inmate should be kept there no longer than absolutely necessary.

With reference to the events on May 12, Ramsay in his statement said:

I was in this cell "hole" for approximately one day when a number of guards came to move me to the old side of the Don. I don't know who these guards were. I was not given any reason for the move. When these guards came in, I thought I was going to have another beating laid on me. I had a coffee cup and started to wet the floor down to make the floor slippery so if they came in, I would have a chance to defend myself. They tried to mop it up through the hole in the door but I just kept adding water. Finally they opened the door and came in anyway. I didn't have any opportunity to defend myself because I was thrown to the floor and kicked and punched from all sides and grabbed by the testicles. I was also struck numerous times by some metallic article. I was dragged to the elevator, and thrown in. A guard was sitting on top of me. Each time the elevator stopped at a floor and the doors opened, I would be held on the floor until the doors closed. I believe they were waiting for the floors to clear so there would be no witnesses on the floor I was to be taken off.

I was dragged off the elevator and to the "hole" in the old side. All the while I was being kicked and punched. When they put me in the cell, I just laid on the floor, as I was too weak to stand. . . . I passed out shortly after this. . . . The next thing I remember I was in a guard's car. I was dressed in my street clothes and on my way to Penetang. I was in shackles and leg irons at this time.

Ramsay alleged that he complained to a doctor at Penetanguishene and also a month later at Kingston about injuries received on May 12. A medical note at the Toronto Jail, dated May 25, upon his return from Penetanguishene, read, in part, "Infected lacerations right knee. Rest of exam. OK." Conceivably this could have resulted from a scuffle while he was being transferred from the new to the old segregation cells on May 12. If so, the question remains whether the correctional officers were using justifiable or excess force on the occasion.

Lochhead in his statement reported on this incident as well as that of May 10:

I remember this inmate and I remember this incident. Ramsay was pouring water on the floor and banging on the metal door. This noise can be heard all over the jail and is very disturbing to the other inmates. Periodically when an inmate becomes this noisy he would have to be removed to protective custody, for example 3 annex east or cells similar to this. These cells have bars rather than a solid door. On this occasion, Ramsay was in such a state from screaming and yelling and bashing on the door that he was disturbing the whole jail. I had him removed to the Old Segregation Cells and this way he would not be able to disturb the whole jail.

The next day, May 11/73, Ramsay had settled down and was taking his medication so I took him back to 1B so that he would be handy to the

examining psychiatrist.

Around 6:15 p.m. [May 12] I was informed that he was acting up again. I made arrangements with Surgery to have him down for a needle to settle him down again. At approximately 6:30 or so he was given an injection and I removed him to the Old Segregation Cells again, where he settled down. We had no problems with Ramsay after this and I believe he was sent to Penetang the next day.

Ramsay walked along quietly to Surgery and he was the same going to the segregation cells. No force was used by myself or any other officers during this time. As far as I can recall, Mr. Peake was the only officer with me, at this time.

In 1973, I was a Lieutenant and was in charge of the Jail on the afternoon shift. This would give me the authority to move an inmate to where I wanted him, and under the circumstances I felt this was best for Ramsay and the other inmate population.

Ramsay may have been somewhat disoriented as to time and confused as to what occurred on which date. It may therefore be that his complaint of assault on May 12 was intended to refer to May 10. According to Lochhead, only two officers (Peake and himself) escorted Ramsay to the old building on the second occasion and Ramsay did not resist on this second date. Support for the disorientation theory was contained in Dr. Dubelsten's observations on the involuntary admission form of May 13, transferring Ramsay to Penetanguishene.

Dr. Dubelsten's comment on Ramsay was: "Mental and emotional functioning is so impaired that he cannot meet ordinary demands of this institution. He has a past history of mental disorder and attended Out Patient Clinic at Clarke Institute. Danger to himself and other inmates at Toronto Jail."

That Ramsay was a very difficult inmate is rather obvious from what has been written above, including his own admissions. Lending further support to this conclusion was the reporting letter of Dr. B. R. Eades of the Mental Health Centre at Penetanguishene to Dr. Dubelsten, dated May 24, 1973. It read, in part, as follows:

Dear Dr. Dubelsten,

Re: Ramsay, Carl

The above-named man was admitted to this hospital on May 13th, 1973, following being certified for Involuntary admission by yourself on the same day.

This man has been under observation at this hospital ever since and our findings are as follows. Mr. Ramsay presented as a demanding, unco-operative, unpredictable man who showed considerable elements of threatening behaviour, consistent with a diagnosis of an Aggressive Psychopath. He was egocentric and unwilling to accept any treatment we had to offer.

Later, at the Kingston Penitentiary, Ramsay must have had a change of



attitude for according to his letter he underwent psychiatric treatment at that institution: "After six (6) months of psychiatric treatment (which included shock treatment), I was released into the inmate population and transferred to this medium security Penitentiary. I have thus far been operating with no problems with any staff of this Institution."

Ramsay considered he had a justifiable complaint about his treatment by the correctional staff at the Toronto Jail. Mr. Carter, in his submissions, contended, in part, "that due to the inmate's disturbed state of mind it is questionable whether his statement of the facts concerning this incident is too confused to rely on".

Ramsay's evidence was uncorroborated save for the equivocal note as to infected lacerations of the right knee. Even if referable to one of the incidents, it might have occurred as a result of his resistance to being placed in segregation. The evidence of the correctional staff indicated that, initially, they were acting to protect another inmate from physical attack. Subsequent dealings with Ramsay were justified as being necessary for the welfare and quiet of the institution and its inmates.

The erasure from the Corridor 2 log appeared to be a collateral matter. I consider that it was unfortunate and wrong, but I cannot, in the absence of any supportive evidence, attach a nefarious connotation to it sufficient to corroborate Ramsay's allegations. Ramsay may well have been dealt with harshly, particularly in connection with being placed in the old segregation cells, and he may have been dealt with roughly while being escorted to segregation. Once the decision for segregation was made, sufficient force was necessary to carry it out. This was not shown to have been excessive or unjustified under the circumstances.

It is, of course, most unfortunate that at the relevant time there was not a proper psychiatric custodial facility at the Toronto Jail to house and care for unsentenced inmates. If it did exist at the time it was not used in Ramsay's case. Since the inception of this Commission, the "hospital" facilities at the Toronto Jail have been improved.

Detention of inmates (even remanded ones) with suspected or proven psychotic tendencies should be in a secure hospital setting and not in a correctional institution such as the Toronto Jail. It may well be that, with the opening of new Detention Centres in the Metropolitan Toronto area, a specialized psychiatric facility for remanded and sentenced persons will be established to service a number of jails including the Toronto Jail. This should, of course, be a secure institution, but it should also be one with an adequate medical staff and a high percentage of psychiatrists as against general practitioners. It should also have specially trained correctional officers. Until such an institution has been created, the need for sufficient psychiatric assistance at the Toronto Jail should be met. Special crisis teams of correctional officers at the Toronto Jail should also be established and trained. These would then be available to cope with aggressive and violent persons within the jail, as well as with other troubled but less volatile inmates.

Ramsay and other inmates facing serious charges, will in most cases eventually end up in the federal penitentiary stream. Consideration might be



given to whether they should come within federal jurisdiction while on remand – at least those, such as Ramsay, who pose special custodial problems. Accordingly, since the proposed special facility would house remand inmates within the potential sphere of both the reformatory and the penitentiary, consideration might be given to it being a joint federal-provincial venture. Consideration might also be given to expanding such a facility to house some sentenced inmates as well as inmates on remand.

## The Polichuk Allegations

### *Exhibits 605A-L and 605X and Y*

Stephen Polichuk was born in Toronto in 1955. He wrote to the Commission in December 1974, mentioning three incidents. One occurred on October 7, 1972, when he was 17. The date of the second incident has been ascertained as November 18, 1974. The third matter was referable to November 29, 1974. No assault was claimed by Polichuk with reference to the second and third episodes, but, since they were within the wider ambit of our terms of reference, some comment will be made on them as well as on the October 7 incident.

In Polichuk's statement he described his home background: "I completed Grade X. . . . When I was six years old, I was taken away from my mother by the Children's Aid. I never knew my father. I was in foster homes until I was fifteen years old, then lived in a rooming house by myself for about a year. It was at this time that I left school. After leaving school, I had about five different jobs, but I didn't like any of them. I then started working for a rock group on and off for a period of two years."

It does not take long for one to see from the above, that this young inmate did not have the privileges of the more fortunate or the stabilizing influences of upbringing by two natural and loving parents. Undoubtedly this must have had a bearing on his attitude to society, as well as on the shaping of his thoughts about how he was looked upon by others. His letter indicated an attempt to find the justice equation.

## FIRST ALLEGATION

Polichuk's interpretation of what occurred was as follows: "While I was in the Toronto Jail I was charged for staring at a guard. The guard that I was staring at got another guard who took me out of the corridor. . . . I started to put up a verbal fuss as I didn't know what was happening and the guard that I had been staring at pushed me head first down the stairs. As a result of this, I had bruises down my right side."

Staring, by an inmate, at a correctional officer has been considered one of the "games" inmates will play at times in order to upset a correctional officer. In this case, the correctional officer who made out the Misconduct Report charged Polichuk with using "foul, indecent, and profane language". The details as set out by C.O.2 William Joseph O'Leary were that when he told another inmate to "put a shirt on" before he was served lunch, Polichuk yelled obscenities at him. O'Leary escorted Polichuk to a reception area and informed C.O.3 James Hugh MacDonald.

MacDonald in his investigation report stated that Polichuk denied the charge laid against him by O'Leary, but went on to say that as the inmate was placed in one of the segregation cells "he banged on the door and started to shout obscenities".

The Assistant Superintendent indicated that Polichuk admitted the misconduct. But the Misconduct Report then stated that what was admitted was the calling of obscenities to "MacDonald and other officers". Reference was then made to the words used by Polichuk *after* he was placed in segregation. The Assistant Superintendent then proceeded to find Polichuk guilty of the misconduct charged. The penalty imposed, together with the Assistant Superintendent's comments, were recorded as follows: "Penalty imposed: 10 days close confinement and restricted diet to be reviewed by Senior Officer daily. If attitude improves to be released prior to expiration of 10 days. . . . Comments, if any: Polichuk appeared as a nervous youngster who would benefit from this confinement; however should be released when this has been achieved."

Having discussed the matter of segregation sentences with various superintendents I am in agreement with the terms of the sentence imposed. That is, rather than having a definite sentence, say for three or five or 10 days, it is preferable, wherever practical, to make the sentence indefinite. For example, in this case Polichuk would serve a maximum of 10 days, but if he were contrite, showed remorse, and indicated that he had learned his lesson and would not repeat the misdemeanour, he could be released prior to that time.

This has the same advantage as indeterminate court sentences "not to exceed" a certain term. It holds out some reward or incentive to an inmate and might affect his behaviour while in segregation in a more favourable way than the hopeless and dreary, even sometimes horrible, prospect of a dead-end sentence in segregation. Psychologically it puts an inmate into a better frame of mind and this can assist him both mentally and physically to cope with segregation and yet accomplish the punishment aspect of the

penalty.

This might be futile in the case of the repeatedly bad actor who cannot be controlled any other way than by full-term isolation. But for most inmates, particularly a youngster such as Polichuk, whose attitude the Assistant Superintendent thought would improve, the communication to them of the possibility of early release gives them the opportunity to think about and choose a mode of behaviour. As Shakespeare said, "The miserable hath no other medicine but only hope."

There is, however, one criticism of entries on the Misconduct Report. Polichuk was charged by O'Leary with "foul, indecent and profane" language while in Corridor 3. This is what he should have been tried on. The reference by MacDonald to the obscene language in the segregation area was something that MacDonald wrote after O'Leary's corridor charge had been set out in the Misconduct Report. Polichuk admitted this segregation episode to Assistant Superintendent Jack. He denied the corridor episode, the one upon which he was to be tried. Mr. Jack's report is silent as to the corridor charge. From the Misconduct Report it would appear that Polichuk was found guilty, not on the charge as laid, but as a result of something that occurred afterwards. This is not to say that Mr. Jack might not have found, on the evidence of O'Leary and the second officer in the corridor area, that the original charge had been proven. It is just that it was not so proven solely as a result of Polichuk's confession to swearing while in segregation.

At first blush the matter might appear overly technical. But it is necessary that the finding clearly relate to the charge, to ensure that in the eyes of the inmate justice not only is done but that it is seen to be done. The Commission hearings indicated that resentment on the part of an inmate often arose from a sense of not being dealt with fairly and justly. Such resentment escalated at times into aggressive action. This, in turn, may have sparked an incident by causing reaction, or over-reaction, by the correctional officer.

Another reason for clarity as to the specific charge, and relating the evidence and finding only to such charge, is that Misconduct Reports should be reviewed by the area office and in the case of the Toronto Jail by the proposed Jail Council. This is not for the purpose of second guessing the Superintendent or his deputy, but in order to see trends of behaviour, to detect problems, and to have the advantage of one source of important information in considering the over-all management of the jail, its staff, and its inmate population.

As for Polichuk's complaint that he was "pushed head first down the stairs" and sustained bruises to his right side, unfortunately the allegation was over two years old. Fortunately it was not, in the scheme of things, a serious allegation. O'Leary could not remember it, even after being shown his Misconduct Report. Undoubtedly he had had dealings with a large number of inmates in the intervening period, many of them involving some sort of confrontation. Although O'Leary was the officer who charged Polichuk and made out the Misconduct Report, Polichuk was unable to identify him from the book of correctional officers' photographs as the person who pushed him down the stairs.

Elsewhere comment has been made that correctional officers should avoid

touching inmates, except where necessary. Our hearings revealed other incidents of pushing, to hurry along a slow-moving or reluctant inmate. This should, of course, be avoided especially in the vicinity of stairways. Polichuk made no complaint at the time to MacDonald, Mr. Jack, or any other senior officer, nor was there any medical notation. One would have to conclude, therefore, that if there was the pushing Polichuk alleged, and the resulting injury, it was not of great severity and the injury was more to the inmate's feelings than to his body.

## SECOND ALLEGATION

On November 18, 1974, Polichuk was charged with three separate offences – “use foul and indecent language”, “disobey a lawful order”, and “conduct himself in a manner detrimental to institution [next word undeciphered]”. The details of the alleged misconduct were set out by C.O.2 Frank Morris as follows:

At about 8:35 A.M. whilst on duty in Corridor 3B cleaning was in progress and I told inmate Steve Polichuk to assist with mopping in Corridor. Inmate became aggressive and abusive and said I am not mopping I am on remand. I told inmate he had to help to keep his area clean and that he had to mop. Inmate became more aggressive and abusive, kicked over a pail of water, and said I am not mopping you [deletion]. I told inmate he was on charge and told him to come up to sallyport. Inmate shouted several times, “No way. Come and get me you [deletion].” Mr. Garrett informed and inmate removed from corridor still abusive.

In his subsequent statement to the Commission's investigator, Morris said that Polichuk used the description “black” before one of his epithets. Morris is a black correctional officer. He further stated, in part: “I smiled at him and his attitude – he became very angry at me and I wanted to keep my cool. . . . Polichuk did not deny the incident stating he had got mad at me because I was smiling at him over the incident, and did not get mad at him.”

Elsewhere in our hearings there were complaints of both officers and inmates smiling and staring in such a way as to provoke anger. Certainly, it is admirable to be able to keep one's cool when others have lost theirs. But correctional officers should be taught that a smile may be misinterpreted and have the same effect as a grin or a sneer, and should at times be avoided.

Polichuk's version of what occurred was as follows:

On the 29th of November 1974, I was sentenced to fifteen months. During my stay at the Toronto Jail on this occasion, I was in 3A corridor in the new section. While I was in this time, I got charged by one of the guards with



refusing to work, which was later changed to using foul language.

When he charged me with refusing to work, I was working and had mopped half the corridor, but the guard, who was a Negro, kept bugging me and saying that I should treat him the same as I do the other guards. This guard then said, "If I wanted to stay in the corridor, I would have to act like a human and not an animal." I then told the guard, "I'll act like a human when I'm treated like one."

He then started yelling at me to get out of the corridor. I asked him what I was charged with and after he stopped yelling at me [he] said I was charged with refusing to work. I then said if that's the charge, you will have to take me out of the corridor. He then ran to the phone and when he came back, he said, "Now you're going to get it, you're coming out now."

I knew what was coming, so I put two hard plastic cups over my fist, backed up into a corner and said, "Come and get me."

About fifteen guards arrived and two "white shirts" started to talk to me and I came out of the corridor. I was charged and spent five days in the "hole" but I wasn't beaten.

There being no complaint of assault, this allegation need not be considered beyond the following lessons. One is that the tensions of the jail can act upon inmate and upon correctional officer. Aside from the question of right or wrong, it is necessary for the correctional officer in his training to recognize this and make allowances and try to reduce inmate-officer confrontations. Of course, it is necessary to have clean corridors, and remand inmates, although not required to do other work, are responsible for the clean-up of their own cells and corridors. If they refuse to do this, they should be disciplined, even to the point of being put on charge. Verbal battles and shouting matches between officer and inmate should be avoided, as they tend to degrade the officer and accomplish little in controlling the inmate. If they occur in the presence of others, they tend to make one or both worry about losing face and maintaining his image.

The other matter to underline is that there was no allegation of assault arising from this incident, even though the matter was accelerating into a tinder-box situation. The calling of senior officers who "talked to" Polichuk and the presence of sufficient numbers of correctional officers (even if fewer than the "about fifteen" mentioned by Polichuk) defused the matter, brought it under control, and hence was justified.

### THIRD ALLEGATION

Again, this was an allegation in which there was no complaint of a physical assault. Polichuk related in his letter:

On November 29th, I went to court for trial and, as it happened, sentencing. The sentence was totally unpredicted, as I expected not to get any time. I got

15 months. Upon returning to the Don, I was given a letter after the evening meal in which my wife-to-be gave me some emotionally heart rendering facts. She didn't wish to continue our relationship. Extremely depressed, I sulked, trying to get a grip on myself. I wasn't in a very perceptive state of mind, but I went to Medication Parade to get something to settle my nerves. I was given two aspirins. When we were locked in our cells, I requested some nerve depressants from the interne in charge of the night's final medication call. I was refused, after being informed that I would have to see the doctor the next morning. If not for some considerate people, who realized that I was dangerously depressed, I don't care to think of what I might have done during that night. They talked to me a substantial portion of the night, having taken notice of the drastic difference from my normally cheerful self. These inmates weren't hired to assist me. They all had problems of their own, and yet *they* even recognized my need for help.

One cannot fault the male nurse (Polichuk refers to him as an intern) for not giving drugs without a doctor's prescription. Once again the need is shown for 24-hour medical staff in the Toronto Jail. The compassion and sympathy and understanding that were urgently needed were provided by persons often referred to as convicts (of those who were on remand, many would soon be among the convicted). Whatever their wrongs against society, one wonders whether such people could not themselves, by communication and understanding, have been among the volunteer members of society instead of among the damned and condemned. At what point in their lives was the turning in the road? What opportunity had been missed by them or by society? If they were repeaters, was this in any way referable to how they were spoken to or treated on earlier occasions in the Toronto Jail?

# The Seymour Allegation

## *Exhibits 606A-F*

The allegation of excessive use of force against inmate Winston Gregory Seymour was made, not by Seymour, but by former inmate Daniel Lovering. It was Lovering who also brought forth the investigation of the case of inmate Donald Trent Crowe, also reported in this section. As for Seymour himself, he was visited by Commission investigators on two occasions. The first time was on October 30, 1974, while he was in segregation at the federal maximum security penitentiary at Millhaven. The second time was on December 4, 1974. He was still in segregation at Millhaven. Both times he refused to be interviewed. On the last occasion, after listening to the investigators, who attended on him, he "got up off his chair and walked out of the office without saying a word."

Seymour was born in Nova Scotia in 1946. His criminal record began in 1965, two months before his 19th birthday, and up to the end of 1974 it included some 14 charges. A sampling of the findings of various courts included two convictions for assault causing bodily harm (on the second of which he was sentenced to three years, on August 2, 1974), two for causing a disturbance, one for assaulting a peace officer, one for common assault, as well as charges of public mischief, obstructing a peace officer, and possession of a prohibited weapon.

From the statements of Lovering and members of the correctional staff, it appeared that a nurse, Mrs. Maggie Gill, was "sworn at and verbally used" by Seymour on the December 30, 1973, afternoon "medication parade" in Corridor 1C. Fearing that she might have problems with Seymour on her

next "medication rounds", Mrs. Gill asked for a correctional officer escort. C.O.2 (later C.O.3) James Doherty was so assigned. On this occasion (6:20 p.m.) Seymour demanded medication. When he was told he had received his earlier, he again started swearing at Mrs. Gill. He was also alleged to have "made a swing towards the nurse with his cup". During the episode he did, in fact, strike Doherty with the cup, breaking one of Doherty's fingers. C.O.5 John Moquin, the shift supervisor, stated in his report that Seymour was then removed to segregation with "only the minimum of force. . . . I might add he was kicking and struggling all the way and was very abusive."

Lovering, in his statement, confirmed the insulting of the nurse, adding that Seymour also "leaned forward towards her. One of the guards grabbed him and Seymour shook him off. The guard pushed the panic button and all the guards came, about seven altogether. They grabbed him by the arms and legs and tried to lift him off the floor. They tried to drag him to the 'hole' and they were all beating him. They were kicking and punching and he was fighting back."

Lovering included C.O.2 Joseph Peake and C.O.2 Edward Dowhey among those participating in the alleged forcible removal of Seymour to segregation. Both of these officers admitted hearing of the incident involving Mrs. Gill and Seymour, but both denied being present or involved in any way. Of interest is Dowhey's comment, "I do know Daniel Gene Lovering as we went to public school together. . . . I have no idea why Lovering would make an allegation such as this one."

This was not the first time during our Commission sessions that we heard of a correctional officer and an inmate sharing similar origins. Somewhere along the way they took different turnings in the road, one choosing to operate in one of the fields of law enforcement, the other finding his way to a position outside the law. How such a shared background and the subsequent polarization can affect the inter-relationship between correctional officer and inmate is considered elsewhere in this report.

Lovering's statement referred to a further incident at night when there was a shift change. This must have been at 11:00 p.m. He would have been locked in his cell in 1C and would have been unable to see into the segregation area where Seymour was housed. His "observations" at that time were therefore not of any significant probative value and were open to many equivocal interpretations. Indeed, even his earlier recounting of events was inconclusive.

It was among the correctional staff's duties to protect the jail nursing staff from abuse and physical attack. This was being properly attended to and the staff was justified in placing Seymour in segregation as a result of his actions. Even Lovering referred to Seymour "fighting back" when being taken to segregation. In view of Seymour's refusal to give any statement, Lovering's allegation remained unsupported. Seymour's reputation for violent behaviour may have resulted in stronger action being taken against him. And Doherty, having been injured by Seymour, may have made his fellow correctional officers judge with less precision the amount of force necessary to restrain Seymour. But these points are speculative.

Considering the question of onus and weight of evidence, I find that Lover-

ing's allegation was not sufficiently proved.

Seymour's name was mentioned during the Commission hearings with reference to a subsequent time when he was in segregation. This was in August 1974 when Seymour was in 3B segregation. C.O.1 Gary Dassy, on that occasion, used what he referred to as "psychology" on Seymour:

It was Sunday night and there was chicken that night for dinner. I took out the bone of the chicken leg because that could be used also as a weapon, and stuffed his chicken leg with salt. He had a cup of tea. He then was given instead of sugar in the tea, salt. I would not give him a drink of water. I told him that there is just you and I now Seymour and one of us isn't going to live if you are going to continue kicking officers and what you have been doing. I told him it would be so easy when he went to sleep, to go in there, cut his wrist, come out make a patrol [an entry] in the book and say he had committed suicide. From that day on Seymour caused no more problems in that Jail.

There was no indication that Dassy's "psychology" was repeated by any other correctional officer. This matter is described in more detail in the "Principal Allegations".



## The Silva Allegation

*Exhibits 607A-H and 607X<sub>1</sub> and X<sub>2</sub>, 607Y<sub>1</sub> and Y<sub>2</sub>*

While at the Toronto Jail on October 7, 1974, Alfred Manuel Silva wrote to the Commission complaining of an assault that occurred when he was an inmate at the (old) Carleton County Jail on Nicholas Street in Ottawa. The ascertained date was September 21, 1972.

This matter normally would have been considered by our Commission as beyond our terms of reference, were it not that the allegation was against two Toronto Jail officers who were on temporary duty at the time at the Ottawa Jail, and the further allegation that they formed part of a “goon squad that travelled about the province on orders from ‘the Superintendent’ [of the Toronto Jail] or ‘Queen’s Park’ [the Ministry of Correctional Services] to beat up inmates”.

The two officers were identified as C.O.5 Stanley Frank Johnson and C.O.4 (later C.O.5) Vassos George Zodiates. As for the real reason why they were sent to the Ottawa Jail, it was set out in the statement of another Toronto Jail officer, C.O.5 Hugh Ramsden Nicholson:

I went to the Ottawa Jail on August 1st 1972. The new institution was opening and it was a transition period. They had staff shortages due to the training required for the new institution (i.e., new system, etc.). I worked as Acting Deputy Superintendent of the old jail (Nicholas Street Jail).

The inmates were taking advantage of this staff shortage – causing all kinds of situations. One time all the inmates took possession of the jail. They took all

the guards hostage. I was one of the very few guards not taken hostage. The inmates held razor blades to the guards' throats and got control of the inner part of the jail.

I used a bluff at this time, telling the inmates that this situation had been expected and a large number of police were outside waiting. A short time later, all the inmates returned to the corridor.

An investigation was done by the Ottawa police and charges were laid as a result. Alfred Silva was an inmate in the jail at this time and I don't know what part he played in this disturbance. I was at the jail seven weeks. I was working sixteen hours a day and conditions were pretty bad at this time. I asked for a transfer back to the Toronto Jail and I was replaced by Lieutenant Johnson and then Sergeant Zodiates (he is presently a Lieutenant). I left the jail on the 21st of September 1972 and have never worked there again.

Silva was born in the Azores in 1952. His statement, including his allegation, read, in part, as follows:

I am a resident of Ottawa and have been going to Jail on and off since 1969. I am now twenty-one years old and serving 15 months for possession of stolen goods.

In October 1972 I was an inmate on remand at the Ottawa Carleton County Jail at 77 Nicholas Street, Ottawa. Two other inmates and myself were taken one at a time out of our corridor, taken to no. 5 Corr. by five guards and were then beaten.

In my case, they asked me to get my things together, I was being moved. When we got upstairs the Lieutenant told me to get undressed, that I was being put in segregation. When I asked why, the Lieutenant [Johnson] grabbed me by the hair and pulled me to the floor. He held me on the floor by the hair while Sergeant Zodiakas [Zodiates] of Toronto kicked me in the face and about the body. This continued for about three minutes, then they just dragged me by the hair into the cell.

I had never seen this Lieutenant and Sergeant before and I thought maybe they had just been hired. When I asked one of the guards who they were, he told me they were from the Don Jail . . .

Lieutenant Nicholson of the Don Jail was also present but he didn't touch me.

As a result of the beating I had one eye completely closed and all sorts of bruises on my face. I had big swellings around my ribs but when I seen the doctor he said I would be fine. After ten days in segregation I went to Court and the Judge told my lawyer to have a police officer come over and investigate. Detective Aldridge of the Ottawa Police took a written statement from me and from a guard who was fired two weeks after . . .

Now I am in the Don Jail and I see Lieutenant Johnson and Sergeant Zodiakas [Zodiates] working here and I can't see how. They were specially sent to Ottawa Jail to beat up inmates and they are senior officers in this Jail, so I must take it that either the Superintendent orders them to beat up inmates or Queen's Park orders them.

The relevant parts of the statements of Johnson and Zodiates read as follows:

JOHNSON. On arrival I met Mr. Alman, who was Assistant Superintendent and that made me next senior officer in the building. Mr. Alman explained that he had several inmates on charge to be removed to segregation one of them being Silva, but they had not as yet been removed from the corridors.

I then went to the corridor concerned. I called out the names of the inmates concerned, told them to pick up their property as they were being removed. The seven concerned, including Silva, wanted and demanded to know the reason for their removal . . .

In connection with Silva's allegations of a severe beating, this is not the case. It was a very touchy situation and only force necessary to remove them was used.

In regards to his other allegation that a "Goon Squad" moves about the Province. There is no such thing. I will make mention that once during my fourteen years as a Correctional Officer, while at the Hamilton Jail, I along with several Correctional Officers were charged with assault. This matter went to the Provincial Court where it was dismissed, the ruling being that only minimum force was used to control a rebellious inmate. I have never faced or been charged with an institutional charge and have letters of commendation on my file, particularly as to my action in the Ottawa jail.

ZODIATES. In September 1972, I do not recall the exact date, the Superintendent of the Toronto Jail, Mr. Whitehead, sent Lieut. Johnson and myself to the Ottawa Carleton Jail, as they were transferring inmates from the old jail to a new jail, and they required additional supervisory staff. They were also having some problems with the inmates. Also, one of their Lieutenants, Mr. Nicholson, was sick at the time.

While there about five weeks, the inmates were transferred to the new jail. Once the move was completed, I returned to the Toronto Jail, but Mr. Johnson remained for another couple of weeks. While I was at the Ottawa Carleton Jail there were several inmates who committed breaches of the jail regulations, and they were charged and placed in segregation.

I don't recall this specific incident alleged by Mr. Silva, but I don't kick inmates. I have had to use force while at the Ottawa Carleton Jail to get inmates out of the corridors into segregation, but only minimal force, and what was necessary.

Usually it was an inmate refusing to obey an order by a Correctional Officer, and when he was charged he would refuse to come out of his corridor and as a result several officers were called to the area to remove him. The inmates sometimes put up quite a struggle and swear at the officers. They will kick at you or anything else they can do to stop you from taking them out. Sometimes these struggles become quite violent and both inmates and guards are injured. That is one reason we use several officers to remove the inmates, so as to minimize the chance of injuries. Also these corridors may have 5 to 10 inmates in them and one officer entering the area could be attacked. In all the time I was at the Ottawa Carleton Jail, Mr. Nicholson was not there, as he was sick.

Having observed Zodiates giving oral evidence on other occasions, I would accept his statement that he does not kick inmates, at least within the ambit of a deliberate or intentional act.

As a result of a complaint made by Silva's lawyer, an outside investigation was conducted by the Morality Department of the Ottawa Police Force. Reference is made to the lawyer on September 21, 1972, interviewing Silva and observing "that his right eye was blackened and also he had scratches or bruises on the right side of his ribs". It was Silva's contention to the police that these injuries were caused by Johnson and Zodiates entering his cell after a verbal confrontation between Silva and Johnson. Johnson was supposed to have made a remark to Silva about Silva's being "a wise guy", whereupon Silva replied, "I am what I am is my own [deletion] business and none of yours."

In the police report, which covers several attendances, are included the following comments:

According to the Superintendent, these two persons [Johnson and Zodiates] were brought in to assist the present staff at the County Jail because of problems they were having with inmates . . . and also involved is the complainant here, Alfred Silva, and the fact that these persons and others have been responsible for causing problems in the County Jail disrupting the routine, being impolite to the guards and generally failing to obey orders within the Institution.

The Superintendent went on to give me some background information on the complainant Silva, who on September 20th made a direct threat to one of the jail guards on duty to his personal property stating that he would burn down his house, and using abusive language and disobeying orders, and subsequently they decided they would place this person in a segregated cell which is on the No. 5 corridor on the south side of the jail, in cell No. 4.

Another incident involving Silva was with another inmate by the name of Hajjar where he was fighting with this person on one occasion prior to the 21st of September and the fight had to be broken up between Silva and Hajjar . . .

Lieutenant Johnson went on to indicate that he was responsible for removing Alfred Silva from No. 1 corridor to No. 5 corridor in view of his actions of disobeying orders and general trouble-making within the jail and subsequently when they got to No. 5 corridor, according to Lt. Johnson, Alfred Silva started using obscene and abusive language and started resisting Lt. Johnson and Sgt. Zodiates and some force had to be used in getting him into the cell door; however, it was only Sgt. Zodiates who entered the cell with this man and finally placed him in the cell before being confined to – this being number 4 cell in No. 5 corridor.

Both of these persons, Lt. Johnson and Sgt. Zodiates, denied having any knowledge of the black eye which Silva is complaining about, and as far as the lacerations on this person's rib on the right side, they state that it is conceivable in placing him in the cell that his rib cage could have come in contact with the bars; however, they state that at no time do they recall having struck this person on the right side of his face near his eye . . .

. . . it became quite apparent that there has been an internal realignment at the County Jail and they are attempting to restore some order in the

Institution as they have been having trouble with a selected few, as previously mentioned, and I was advised by the Superintendent today, and Lt. Johnson, that some of the other inmates who are there actually came forward thanking them for restoring some order and removing the trouble-maker to the No. 5 corridor where he has been placed in a segregated cell.

The investigating officer concluded his final report with this observation: "As a result of my investigation in this assault I was unsuccessful in locating witnesses to this alleged assault and therefore charges cannot be substantiated."

Mention was made, in one of the police reports, of an inmate witness who refused to give "a formal statement" without first speaking to his own lawyer. No such statement was ever obtained. The investigating detective voiced his own doubts as to how much credibility could be placed upon that statement, even if obtained, "in view of his involvement with this group and the judgment pending against him as a result of a recent incident in the County Jail".

At least the matter was investigated by an outside agency which formed an opinion on the basis of the evidence before it. There may be a suspicion held at times by some inmates that because police officers and correctional officers are both members of law enforcement agencies, the police might not as vigilantly or as vigorously investigate complaints by inmates as they would complaints by correctional officers. Whether such suspicions are valid or not, it is to ensure complete confidence in the minds of all that an overruling Toronto Jail Council has been suggested by this Commission for this as well as other reasons. Certainly the police officers assigned to this Commission as investigators comprised a trained group which under the direction of Commission counsel and associate counsel carried out their tasks in a most diligent and objective manner. There is no reason to suppose that the Ottawa Police Force, Morality Department, did not as jealously regard its objective role. Nevertheless it would have been preferable had its report been subjected to review by an independent Jail Council such as the one advocated for the Toronto Jail.



# The Slaven Allegations

## *Exhibits 608A-F and 608X and Y*

As a result of a letter received from Randolph James Slaven in December 1974 he was interviewed by Commission investigators and a statement obtained from him. He alleged that on two occasions he was assaulted by correctional staff at the Toronto Jail. Slaven was unable to give precise dates of these occurrences. From other documentation it would appear that the first allegation was referable to the day of an arrest on September 5, 1964. The date of the second allegation coincided with an arrest on July 4, 1969.

As may be imagined, some problems were encountered in the investigation of such stale claims, not the least of which were the failure to locate old corridor logs and the fact that Slaven's available medical status record did not go beyond April 1972. There would also be the matter of reliable identification of correctional officers, and, even if this did not pose a difficulty, there would be the thorny problem of the officer trying to recall events in sufficient detail to properly answer the complaint. Mention has already been made that even with fresh claims the "write-ins" did not give an opportunity for the proper testing by cross-examination of the statements received and filed. And Slaven's complaints went back to 1964 and 1969!

Slaven was born in Ontario in 1945. His rather lengthy record went back to March 1962. At the time of his interview he was serving a 10-year sentence for robbery, pointing a firearm, escaping custody, and attempted car theft. Slaven described the incident giving rise to these charges as follows: "I was trying to hot wire a car and this young policeman came up on me. I grabbed his gun and told him to lie on the ground. I handcuffed him and left with the gun. I got caught a couple of hours later."

At the time of writing to the Commission, Slaven was only 29. When interviewed, he stated, "My sentences, including juvenile, total about 21 years."

## FIRST ALLEGATION

Slaven indicated that following his arrest on September 5, 1964, he was involved in an inmate scuffle in one of the corridors. "Two inmates attempted to assault me." He said he was then taken to segregation with one of these inmates. Later, he alleged, C.O.3 William Mitchell came to his cell and ordered him to go to the end of the segregation area and pick up his blankets. Continuing his allegation, he said, "I was about 10 feet from my cell door and the guard told me to hold the blankets one in each hand, above my head. As I did so he attempted to strike me in the mid-section. I blocked his punch and his blow glanced off my arm. For a very brief second he stood glaring at me. The guard told me to go back into my cell and he locked the door behind me and left."

Slaven then alleged that about two minutes later C.O.5 Stanley Johnson entered his cell door.

He positioned his back against the wall to his right as he entered the door, and asked me why I was in the "hole". I told him that I didn't know. He didn't appear to be too interested in my story. He proceeded to ask me questions on a different subject altogether. He kept asking me what the guard had instructed me to do if another guard should come to the door or cell window. I told him that my instructions were to stand at attention and to repeat the words, "I'm a fighter, I'm a fighter."

After I told him this he gave me a judo chop in the Adam's apple. He gave me about five or six of these chops, and then left. As he was leaving he told me that I was to repeat, "I'm a fighter" if any guards came to the window.

About three days later a Lieutenant came to my cell and asked had I learned my lesson, and I said, "Yes," even though I didn't know why I was in the segregation cell.

I was transferred out to Millbrook after that.

The "lieutenant" was not identified. The ranks ascribed to Mitchell and Johnson were not those of 1964 but those at the time when Slaven was interviewed. Mitchell had only been mentioned by one other inmate on a complaint and that was in the Kobelnak "write-in". Johnson had been the subject of several inmate complaints. Both Mitchell and Johnson, when interviewed, said they could not recollect the incident. Considering the number of inmates these officers would come in contact with between 1964 and 1974-5 (when they were interviewed), it would be very difficult for them to recall the events surrounding this allegation. Accordingly, it would be most unfair to make any judgment on this matter.

The incident is an example of the complaints inmates wrote to the Com-

mission as a result of invitations appearing in the media and posted in Ontario penal institutions. If it was factually true, it was also an example of the games correctional officers were alleged to have played on inmates. If untrue, it was an example of the games played by inmates in making false accusations against correctional staff.

## SECOND ALLEGATION

Although this was a more recent allegation, by about five years, some doubt was cast on it by the coincidental improbability that, among all the correctional officers on staff, it was the same two, Mitchell and Johnson, who were alleged to have been involved. During the Commission hearings, correctional officers were wrongly identified at times, and yet in a most definite manner, by inmates and ex-inmates. Was the error one of carelessness? Or was it one of spite or revenge for a real or imagined wrong?

The second allegation of Slaven was that on July 4, 1969, together with another inmate of Burwash Industrial Farm, he escaped from that institution. Two days later they were arrested and taken to the Toronto Jail. He stated that six officers then escorted them to segregation. He identified only Johnson and Mitchell, adding,

I thought at the time Mitchell's name was Brown for some reason or another. Anyways, as we were taken to the cell that we were to be confined in, Johnson made a remark like, "So you want to be a big escape artist?"

After he made this remark, he directed me into a cell, but I didn't quite make it into the cell. I would say I was about halfway into the cell when fists and boots began to fly. I remember a brief moment of this and I passed out and they left me in the cell. I was unconscious and came to the next day and I was transferred out [to Parry Sound].

C.O.4 James B. Brown was interviewed, since his name was mentioned by Slaven. His employment at the Toronto Jail did not commence until almost two years later. Johnson and Mitchell again denied any recollection of such an incident. Johnson added, "If he had to be placed in segregation, for whatever reason, only necessary force would be used and at no time would he be deliberately assaulted by me or any other officer on duty at the time."

As Mr. Carter stated in his submission, this allegation of Slaven's was also "unsubstantiated", at least insofar as any other evidence was concerned. Correctional officers do not look favourably on escapes and attempted escapes, as was mentioned in the Lake "write-in", as well as elsewhere in the report. This may have supplied a motive for retribution on occasion but it would be merely speculative to infer that it did so in this case. And even if there was motivation, that is still short of the evidence necessary to substantiate Slaven's claim. Therefore, while there may be suspicion in the matter, there is not sufficient proof for a positive finding.

## The Szeler Allegations

### *Exhibits 609A-MM and 609X<sub>1</sub>-Y<sub>3</sub>*

Richard Szeler was born in Toronto in 1955. His allegations against correctional officers at the Toronto Jail are referable to two dates, August 21 and August 26, 1974. To put his allegations into proper perspective, one should consider a statement obtained from his lawyer:

I have acted as Counsel for Richard Szeler on numerous occasions and I have been to several institutions to speak with him. I have also had numerous inquiries about Szeler.

First of all, I might say that, I can recall Szeler complaining of being rough handled by the Richmond Hill Police, by the Guards at the Toronto Jail, by the attendants at the Ontario Hospital in Penetang, Ontario, by Jail Guards at Mimico and by Jail Guards at Guelph.

I have had inquiries from the Ontario Provincial Police in regards to allegations that Szeler has made, also by the Ministry of Correctional Services and by the Ombudsman's office. The Ombudsman's office apparently have investigated an alleged assault and have advised me that they can find no basis for the complaint. I have had so many complaints from Szeler over the years that I do not put too much credence in anything that he tells me. I find Szeler to be mouthy and aggressive if he doesn't get his own way.

Added to the above is the fact that, during the month of August 1974, Szeler was in the Toronto Jail awaiting trial on a charge of attempted murder. This charge was later reduced to assault causing bodily harm. While the

more serious charge was pending, this young inmate would undoubtedly be experiencing great worry, strain, and tension. Since he was apparently not the most stable of individuals under ordinary circumstances, one could visualize how difficult he would be while awaiting trial on the attempted murder charge.

## FIRST ALLEGATION

Although all versions of what occurred on August 21, 1974, are not in total agreement, the following distillation would appear to be the essence of the statements by the correctional staff.

1. Szeler was working as a corridor man.

2. C.O.2 David Webster Cockburn saw Szeler dressed in "kitchen whites" walking towards Corridor 1. The kitchen whites he was wearing included a white tee shirt and white hat. These are worn by inmates at the Toronto Jail who are working as kitchen helpers. Their work, as is also the case with corridor men, is an assigned duty which carries with it some added privileges. As a corridor man Szeler would not have reason or be allowed to wear "whites". On the inmate status totem pole, whites indicate a higher stratum with certain privileges, not the least of which is greater freedom in going about the jail. Already distrustful of Szeler and recalling the case of an inmate who had escaped while dressed in kitchen whites, Cockburn became suspicious.

3. Cockburn questioned Szeler.

4. Szeler said that he had been ordered by another officer to bring some dishes down from his corridor. This, however, would not have entitled Szeler to whites.

5. Cockburn ordered Szeler to change back into the regular jail "blues". When there was reluctance on Szeler's part to comply, Cockburn began to escort him across the rotunda, where they met C.O.2 Peter Samuel Anson.

6. Anson told Cockburn that he had earlier cautioned Szeler about his dress. C.O.6 Stewart Arthur Garrett, the head shift supervisor, said in his statement that while on rounds he had also seen Szeler in whites and had given orders to one of the officers (C.O.2 Robert Driscoll) that Szeler was to change into blues.

7. As a final result of the various orders, Szeler changed into blues. He also threatened Cockburn with, "Wait 'til I get you on the street. You're a dead man."

8. Cockburn chased Szeler and had him sit in the rotunda.

9. Garrett saw Szeler in the rotunda and ordered him to return to his corridor.

10. Anson escorted Szeler towards Corridor 2 and while he was doing so Szeler turned and attacked him.

11. Other correctional officers came to Anson's assistance and subdued



Szeler.

12. Szeler was taken to segregation under the supervision of C.O.5 Donald McKay and C.O.5 John Howard Moquin. It was admitted by Moquin that some force had to be used as Szeler put up a struggle while he was being moved to segregation.

Szeler, in his allegation, at first identified C.O.2 Charles Casey as the officer who had struck him. Later, he changed the identification to Anson. Casey was not on duty when the incident occurred. It was Szeler's contention that as he was setting out, escorted by Anson, from the rotunda to Corridor 2, Anson punched him in the back, in the shoulder area. He said that he turned around, told Anson not to hit him, and was then punched in the face by Anson. "I swung back and missed Mr. Casey [Anson]. That was a bad mistake on my part because then I was knocked down and I heard the buzzer go off."

Szeler then related that he was kicked by correctional officers in the ribs and leg. "I was screaming, hoping they would stop. I had screamed many times in other jails when I was getting hit and they would usually stop." He alleged that he was then picked up by the feet and shoulders and "dragged" to segregation, and that he received a "beating . . . all the way".

At the misconduct hearing, the charges were "use foul or indecent language", "disobey an order", "conduct himself in a manner detrimental to institution program" and "assault an officer". He was found guilty and the penalty was "indefinite segregation to be reviewed daily". The Superintendent, Mr. Taylor, apparently knew Szeler from a time when he was on staff at Guelph Correctional Centre and Szeler was an inmate there, for a comment of his on the misconduct sheet indicated that this was the type of behaviour Szeler had exhibited at Guelph. It was also mentioned that his intelligence was not of the highest.

Anson denied any assault on Szeler. His statement read in part as follows:

As I was escorting him to number two corridor, still in the "dome" area, but by the cross gates, at this point Szeler turned around and reached for me with both arms. I leaned back to avoid him and he tore the pocket off my shirt. I knew Szeler was an epileptic and he was screaming and shouting at this time, so with the aid of four other officers, he was taken to segregation. We had to grab him and carry him as he was resisting and struggling very strongly. I realized it was not a fit he was having but just temper.

At no time to my knowledge was Szeler struck in any way, but force had to be used to restrain him.

Cockburn in his statement referred to earlier events, and then added:

Mr. Garrett said that Szeler was a bit simple and it would be a waste of time putting him on charge. He told me to put him in #2 corridor. Mr. Anson was there and he escorted Szeler toward 2 corridor. When they were a foot or two away from the grille at 1 and 2 corridor, Szeler turned and started punching and kicking Mr. Anson. Mr. Anson was trying to ward off the blows and kicks. I ran to assist Mr. Anson. Szeler was really violent at that time. He was

screaming and lashing out at anyone who came near him. We overpowered him and got him down onto the ground. By that time another couple of officers had come to our assistance. We got him subdued and escorted him over to segregation.

The statements of McKay and Moquin indicated that force had to be used to remove Szeler to segregation, but, as McKay observed, this was "no more . . . than what was necessary to keep the inmate under control".

There was no corroborative evidence, medical or otherwise, of Szeler's allegation.

Szeler has been variously described as "unco-operative and antagonistic", "an obstreperous troublemaker and guard-baiter", "one who blames others for the trouble he generates", "a youth who demands a lot of attention for his complaints", "an epileptic who sometimes refuses his medication and a potentially extremely dangerous young man, especially when he refuses his medication". The composite image is that of a truculent, resentful young man whose mental ability is somewhat circumscribed by a Grade III education.

It is apparent from the above that Szeler was a problem inmate. This was exacerbated by the serious court charge he was facing. On his own statements, he breached jail rules with reference to wearing "whites", refusing to obey an order, and attempting to assault an officer. Whether Szeler was goaded or not, and whether he was physically and mentally pushed are matters in issue. On the weight of evidence one would have to find that his allegation of assault was not made out and that when force was used to firstly subdue him and later to take him to segregation, only that amount that was necessary was employed.

But the matter from the point of view of preventing similar incidents in the future is not so simple. Inmates of the temperament and intelligence of Szeler, facing the serious charges he did, should be kept in a separate psychiatric facility or at least in a distinct wing with adequate psychiatric staff.

I am pleased to report that, after the beginning of this Commission, physical changes were made at the Toronto Jail and such a wing was set up. The matter now is, therefore, one of classification. Nevertheless, no matter where an inmate is quartered and whether he shows a predilection towards violence or not, the very nature of custody, particularly in an aged and overcrowded institution, can cause an emotional outburst. It would be advisable in such circumstances to have medical personnel available to tranquilize a disturbed inmate either intramuscularly or orally. It would also be advisable to put such an inmate in a nearby holding cell and allow him to "cool off" before taking him to the more distant segregation cells.

At the Toronto Jail, the distance from the old section of the jail to the segregation cells in the new section is considerable. It involves descending a flight of stairs, and going through a basement passage to reach the elevators in the new section. A struggle between an inmate and correctional officers may continue all the way along this route.

In such circumstances, officers specializing in crisis intervention would be of great assistance. Research has indicated that the violent outburst lasts

about 30 to 60 minutes. The emotional "high" might then peter out benignly or lead into a state of depression. If the latter, then the inmate should be watched closely, particularly if the depression is a serious one or might lead to attempts at self-destruction. During his period of frenzy it is important for the inmate to know that someone sympathetic is present. This person's role may be primarily that of a listener who "agrees" that the inmate has a right to be upset and who "sympathizes" with his grievance, even if it is only a minor or imagined one. This is not a time to attempt to rationalize or explain the reaction or behaviour of others, but a period for "repeated agreement" with the inmate. Of course such officers, properly selected and trained, should be entitled to a higher pay classification.

## SECOND ALLEGATION

Although Szeler's punishment following the first incident was indefinite segregation, to be reviewed daily, he apparently gave adequate assurances as he was released on the morning of the third day, August 23. Three days later he was in difficulty again. The details on the Misconduct Report made out by C.O.2 Robert Driscoll were as follows:

The above inmate was ordered to mop two annex centre at 8:00 o'clock along with another inmate. He said "I mop when I feel like it and I am not mopping this morning, what are you going to do about it?" He was taken from the corridor with the minimum of force, fighting with Mr. Peake and Mr. Rowsell down to the dome shouting, "You [deletion]. I will kill you if I get you on the street."

Remanded inmates are required to clean up their own areas, but are not obliged to do general duties elsewhere. At times there appears to be a misunderstanding by remand inmates as to their rights and obligations in this regard. It would be of help if a brief, clearly worded pamphlet on jail procedure and rights and duties of inmates were handed to all inmates on arrival at the Toronto Jail.

Szeler's version of what occurred was that Driscoll had told him to "straighten up some beds". He said that he had done this, but that Driscoll did not think he had performed his task properly and called him out of the dormitory (the accommodation Szeler occupied in the annex was dormitory rather than cellular). Szeler said that he was then "grabbed" by C.O.1 Gerald Frederick Rowsell and two other officers and they "threw" him down the stairs. "I was beaten and taken to the hole again."

Rowsell in his statement said, in part:

I got a phone call to go to 2 annex as Mr. Driscoll was having trouble. On my arrival, I found Szeler arguing with Mr. Driscoll. He refused to do his work

and also refused to come out to the corridor.

Mr. Peake and myself went in and asked Szeler to come out and when he refused we put a restraining hold (armlock) and marched him to the B landing. On the entire trip, he was swearing and struggling. The only force that was used getting him there was the armlock. We met the Chief at the landing and Szeler was placed in the cell without incident.

Szeler in his statement had complained that he was held five days in segregation without a charge. This is contradicted by the filed Misconduct Report. The charges were "neglect performing the work or duty assigned to him", "use foul, indecent and profane language", "disobey any lawful order", and "attack or threaten to attack another person".

Once again, Szeler was found "guilty of misconduct". For purposes of review in the future it is recommended that a finding be set out on each specific charge rather than just one blanket finding. The penalty was the same as pronounced on the hearing five days earlier. The comments of the Superintendent were similar, with the added note, "He has been at the N.P.C. [Neuro-psychiatric Centre] in Guelph and his behaviour there was much the same."

The weakness in Szeler's allegation with reference to the events of August 26, is that if one were to accept what he said, the conclusion would be that for no apparent reason or at best for the rather arbitrary and picayune actions of Driscoll and without any wrongdoing or provocation by Szeler some other correctional officers severely assaulted him. A medical report the following day mentioned no injuries or complaints, just that Szeler refused medication, was "hysterical", and was to continue with his prescribed tranquilizing medicine. In his own statement, Szeler specifically mentioned that he made no complaint either to the Superintendent or to the Assistant Superintendent. He had the opportunity to do so when speaking to each of these persons during the ensuing few days.

The finding in this matter is therefore the same as in the earlier incident, five days before. I am in agreement with Mr. Carter's summary submission, from which I quote, "In summary it is submitted that the veracity of this inmate's allegations should be seriously questioned and that any force which was used by the correctional officers was only that which was necessary to carry out lawful orders in fulfilling their duties of maintaining order within the institution."



# The Torok Allegation

## *Exhibits 611A-K and 611X and Y*

Istvan Steve Torok was born in Hungary in 1937. He came to Canada in 1957 and began work in Northern Ontario as a miner. His letter of complaint was written to me directly rather than sent in the care of the Commission. The probable reason for this was that Torok had appeared before me at a trial with a jury on a charge of public mischief. His letter to me was reforwarded to the Commission's executive secretary for processing in the same manner as other complaints. Accordingly, Torok and correctional officers were interviewed and statements taken and filed. Other pertinent documents were also filed by Counsel and among these were Torok's medical status summary and assessment reports of the Ontario Mental Health Centre at Penetanguishene.

Although I was familiar with Torok's court action I decided that his allegation, like all the others, should be reviewed by me. The alternative of assigning this allegation to counsel, to which I had given some thought, would have broken the uniformity of treatment. All references and findings are based solely on the material filed at the Commission hearings.

On November 24th, 1972, Mr. Torok was arrested at the Toronto International Airport on a charge of mischief.

The records show that on the night of November 24th, 1972, Mr. Torok approached the information booth located on the departure level at the Toronto International Airport and made inquiries from one of the ground hostesses on duty concerning an Air Canada flight to Frankfurt, Germany.



As the flight in question was due for immediate departure the hostess redirected Mr. Torok to Air Canada. At this time, Mr. Torok was alleged to have stated, "The plane is going to blow up." As a result of this remark the hostess notified Air Canada and Mr. Torok was arrested.

Torok was found guilty of the charge by the jury and sentenced to six months. (His conviction and sentence were upheld by the Ontario Court of Appeal.) During the period Torok was in custody he was in the Brampton Jail, Guelph Correctional Centre (including its Neuro-psychiatric Clinic), the Ontario Mental Health Centre at Penetanguishene, and the Toronto Jail.

In his letter, Torok said: "Some time in June in the Don Jail I was beaten by a 'goon squad' [which] put the boots to me my lower extremities and dragged me off to the hole."

Elaborating on this, in his statement, Torok related that on May 16, 1974, he entered the Toronto Jail.

I was first put in corridor 1 and the same day put in cell 4 in corridor 2. Next day I was put in cell 6, then I got back to number 4 the next day. When I finally arrived in cell 4, I asked the guard to get me a requisition slip as I wanted to see the Superintendent about being moved so often.

The guard said, "You're out of luck, you'll have to wait until tomorrow, Tuesday" about the 20th or later of June. The next day I got the requisition, filled it in and gave it back to the guards.

A Mr. Garrett, the assistant superintendent, came to see me in the dome. I told him I wanted to see Mr. Whitehead, the Superintendent, and not him.

He said, "I'm here to tell you what to do and if you don't co-operate, I'll put you in the hole."

He got up and left and I was taken back to my corridor where I was moved into cell 17.

I was there about two days and I was told I was going back to number 6 cell. I objected because I wanted to remain where I was in cell 17, because it was a comfortable and peaceful cell. A guard said, "If you're going to get transferred, you're going to get transferred." The guards took me out of cell 17 and I was escorted to the dome.

Mr. Garrett, the assistant superintendent, showed up and he ordered the guards to take me to the hole. Two guards then escorted me down to the hole. When I got there they asked me to strip down. I did, four guards, one's name was Garrett and another's name was Dassy, stretched me out on the floor. Two held me down, one stood on my hands and the other on my feet with my legs spread apart. Dassy kicked me in the guts and privates and Garrett poked his fingers in my eyes and I was being held on my back. . . . The guard who held my hands was about 6 feet tall and skinny and had a white shirt. This beating lasted about five minutes.

I was pushed into the cell and the doors were locked. This happened about 10:00 a.m. in the morning.

When the guard came with my lunch about 12 o'clock, he pushed the tray under the cell door and I asked him to see a white shirt. . . . Nobody came to see me until 8:30 or 9:00 a.m. the next day, but there was an inmate in the

room outside my cell. I talked to him and he said I could be there for ten days.

I said, "For Christ's sake, get me some blankets or some clothes", as I was naked and there was no mattress or anything in my cell.

The next morning a white shirt came to my cell. He said, "You're lucky, you're going to get in the next cell, over there you'll have a bed and a wash basin and you can clean yourself."

I then got transferred back to corridor number 2 and was put in number one cell. I spent the rest of my time in the jail in that corridor and I was released on July 3, 1974.

In answer to Torok's allegations, C.O.6 Stewart Arthur Garrett said, "I have never had any dealings with Mr. Torok either in an incident nor in the segregation areas." He referred, however, to putting through six requests from Torok between May 24 and June 13, 1974. The details of these and Garrett's actions on the same were as follows:

Request – May 24th, 1974 – Request corridor change. Refused by me.

Request – May 29, 1974 – Request for me to check to see if any outstanding charges. – Nil.

Request – June 11, 1974 – Request for me to check discharge date. – Inmate advised re discharge date.

Request – June 11, 1974 – Check to see if he could work in the kitchen area. – Request refused.

Request – June 12, 1974 – Request check to be made re discharge date. – Advised July 3rd.

Request – June 13, 1974 – Requested me to check if his clothing had been washed at jail. – Inmate advised they were.

The date of discharge is an important one to inmates and it is noted that Torok requested information with reference to his date of discharge on two successive dates, June 11 and June 12.

Garrett ended his statement with the observation, "I did not have any other contact with this inmate and his allegations absolutely astound me."

C.O.2 Alexander Sills, in his statement, said that it was Garrett who took Torok to segregation. This is confirmed by the Corridor 2 log. "I made two entries with respect to this inmate, one at 8:30 a.m. when he refused to clean up and used abusive language and the second at 8:33 a.m. when he was taken to segregation by Mr. Garrett, [a] senior officer."

Sills added that Torok went out of the corridor without a problem. "No force had to be used to restrain him or remove him." Although it would appear that Sills originally intended to charge Torok and this is why he was taken to segregation, Sills said, "I was later informed that this inmate had a mental problem and no misconduct was laid against him by me." The 1B log shows that Torok was kept in segregation from 8:40 a.m. on Thursday, June 6, to 10:00 a.m. Friday, June 7.

Torok was not a violent or aggressive inmate, but while in the Toronto Jail he was a rather demanding person. It is understandable that with little or no diversionary program to occupy them, inmates not accustomed to being

in custody, and even some who were, might seek a break in the routine. Frequent requests could be an excuse to talk with correctional officers and thus a chance to cope with the monotony of their prison life. From the standpoint of the correctional officer, these requests, particularly when of a repeated or not too serious nature, could be considered an annoyance and an interruption of their busy routine duties. Certainly if multiplied by the number of inmates in custody, it could be not only disruptive to the carrying out of other duties but even crippling. Nevertheless, when requests are made they should be handled as quickly as possible, particularly inquiries about discharge date. The date of discharge is complicated for many inmates, involving as it does a computation of statutory remission. In some institutions, inmates are told their discharge dates upon entry into prison. This has something to commend it, both in relieving the tension of uncertainty and also in indicating that if an inmate's conduct does not measure up to the required standard he may lose his statutory remission and be obliged to spend a longer period in custody.

Torok named Dassy as one of those who assaulted him. Dassy's "quitting the Commission" meant that he was not available to answer this and other charges not dealt with in his evidence in chief.

Torok, in his letter, referred to a "goon squad". As mentioned elsewhere in this report, this was an expression used by some persons. There was no formed squad as such. Although certain correctional officers were called upon more frequently than others to cope with problems requiring the presence of a few or several officers, both the number and personnel varied. It is necessary to examine each incident and allegation. I am satisfied, in this case, that no such squad was used against Torok.

Mr. Carter in his written submissions pleaded with some validity the following:

... the inmate Torok has made allegations with respect to this incident without any supportive materials or substantiation. The records of the activities for June 6, 1974, in segregation area 1B show that approximately three hours after the alleged beating all the inmates were visited by Correctional Officer Johnson and at that time there were no complaints. In light of this inmate's record before and after the alleged incident for requests and complaints, it is curious that if such an altercation had occurred nothing was said.

It is further submitted that in conjunction with the above paucity of substantiation, the credibility of this inmate as to complaints and statements of persecution must be seriously questioned because of the history of paranoid behaviour and his diagnosed, disturbed psychological state.

... The medical records show that Torok has a history of being a chronic complainer and feeling persecuted. During some of his six month sentence he was at the Mental Health Centre in Penetanguishene for evaluation. Torok at this time was diagnosed as clearly having a long standing paranoid illness, probably schizophrenia.

Of some concern, though, is Torok's allegation of being transferred frequently from cell to cell. This may at times happen when an inmate is

annoying other inmates. At times it may be dictated by overcrowding and an attempt to keep inmates in the same classification category quartered together. Nevertheless it should be recognized that frequent or repeated corridor or cell transfers of inmates can be very disturbing to some inmates. Each move may require a readjustment to new surroundings by people who have difficulty adjusting. Even new cells and recently acquired corridor mates may take on a needed familiarity and give a certain amount of confidence to a person housed in strange and disturbing surroundings.

A matter of equal or maybe even greater seriousness was the fact that Torok was kept in segregation for a period in excess of 24 hours (and then released) without any indication of a hearing. Sills' explanation of why no charge was laid is understandable. If a charge had been laid, then of course there would have been a hearing by the Superintendent or his deputy. It is recommended that, for recording and review purposes, hearings should also be held by the Superintendent or his deputy when inmates are taken into segregation and released without any charge being laid.

# The Pretty Allegations

## *Exhibits 642A-T and X-Y*

Paul Allan Pretty addressed a letter on December 16, 1974, to Rae Corelli, one of the senior reporters at the *Toronto Star*. Mr. Corelli was that newspaper's writer on legal matters, and had genuinely shown interest in the work of this Commission. Pursuant to Pretty's request, Mr. Corelli reforwarded the letter to this Commission. Pretty was subsequently interviewed by the Commission's investigators, as were also the correctional officers he named or who could be identified with the exception of a former correctional officer, David Skoyles, who had retired in 1972. Skoyles was believed to have gone to England and his whereabouts were unknown. His Misconduct Report statement was, however, produced.

Pretty was born in Ontario in 1951. His record dated back to 1968. Pretty's allegations referred to two dates in 1971 – January 6 and January 14. At the time he was serving a six-month sentence for possession of a narcotic. That sentence was pronounced October 5, 1970. On December 5, 1970, he was transferred from Millbrook, a provincial maximum security prison, to the Toronto Jail as a behavioural problem.

Once again we have a situation where difficult inmates, even from maximum security institutions, are transferred to the Toronto Jail, imposing added burdens on the Toronto Jail staff. Not only does the Toronto Jail have to cope with inmates that other jails and correctional centres find difficult, but there is the possible added burden of ensuring that these inmates do not incite others, or fight with other inmates. For then the problem would involve not only the transferred inmate but also those already in the Toronto Jail.



It is almost a case of encouraging the Toronto Jail's reputation for strictness and toughness on the part of its staff; relying on it on the one hand, and yet being ready to criticize the Toronto Jail for such reputation on the other. Although the advantage to other institutions, even those of a maximum security nature, of transferring out and breaking up groups of difficult or trouble-making inmates can be seen, the end result is to make the duties of the Toronto Jail staff more onerous. According to the clinical record of the Mental Health Centre at Penetanguishene, where Pretty was sent on January 20, 1971, he was in segregation in Millbrook on 18 separate occasions before being transferred to the Toronto Jail.

Pretty had a history of mental problems, having been in the Whitby Ontario Hospital from June 9, 1970, for a 30-day period. The diagnosis at Penetanguishene was that Pretty had a "personality disorder and was emotionally unstable". An opinion was expressed in his Penetanguishene clinical record that he was "mentally ill and dangerous both to himself and others".

Pretty, like some other Toronto Jail inmates, presented an unfortunate picture, for someone who had good potential. A grandfather had been a Governor of one of Ontario's jails for 20 years. He himself had shown a healthy interest in sports, and when 14 placed fifth in the Ontario Golf Tournament for teen-agers. His mother described him as interested in "model planes, cars, photography, and listening to records" and as someone who "took piano lessons and tap dancing". His problems at Millbrook and his previous history should have dictated that he be placed in a different environment than the Toronto Jail. In this regard it would be preferable if there were a custodial facility in the Toronto area attached to a psychiatric hospital, where there could be both positive security and psychiatric assistance and treatment. Pretty is not the most glaring illustration of this need. There were other cases examined by this Commission where the necessity was more apparent, but Pretty is a cited example. As has been mentioned elsewhere, since the start of our hearings the psychiatric facilities and accommodation at the Toronto Jail have improved.

## FIRST ALLEGATION

In his statement, Pretty alleged the following:

On January 4th [1971] or thereabouts I was playing around with an air vent in 3A corridor and a guard saw me and put me in the hole in 3B, cell number 5. There was no bed or facilities in the hole.

On January 6th a guard came along when I was in the hole. He saw blood on my left wrist because I had cut it with a piece of glass I found on my cell floor. It was about ½" long (the glass). The guard phoned some place and I was escorted to the hospital. The nurse put some medication on the cut and bandaged it up. I was taken downstairs to the place where prisoners are booked.

The Deputy Superintendent, whose name was [Allan] Dunbar . . . hit me in the stomach with his closed fist. There were about eight guards there and one of them I knew as "Alice the Goon" [Albert Victor Reynolds] . . . about 6'4" and 230 lbs. or more, held me up by the hair at the back of my head and the others were punching and kicking me. I don't know any of the other guards who were there assaulting me. Then they took me back to the hole and kept beating me all the way back and I could hardly stand up. I got to the hole and I found that my left thumb was dislocated – the capsule was broken when one of the guards tried to push my hand down the hole in the floor with his boot while I was lying on the floor. That was the way they left me. Two or three days later, Superintendent Whitehead came in . . . He told me, "I'm letting you out of the hole and you'd better walk on eggshells or you'll find yourself back in here again."

The Misconduct Report of January 4 set out the start of the episode.

At approximately six o'clock on Monday Jan. 4th/71 while on duty in #3A Corr. I had patrolled the south side and when coming into the north side I observed inmate Paul Pretty pulling and banging on the ventilator in the new air duct which runs through the cell block. I ordered him down and asked what he thought he was doing. He replied, "What the [deletion] do you think I'm doing, getting this [deletion] thing open." I ordered him to the sallyport and phoned Mr. Duncan who ordered him to segregation.

Part of that Misconduct Report contains a statement of the senior officer, Assistant Deputy Superintendent James J. Duncan. "This inmate was escorted to 3B by Lt. Sweeney. He was abusive after being placed in the cell (e.g. during my inspection he called me 'a yellow-livered goof')."

Although Mr. Dunbar was named by Pretty, it would appear from the report of Mr. Duncan that it was Mr. Duncan, not Mr. Dunbar, who had dealings with Pretty at this time. Mr. Dunbar, who gave oral evidence before the Commission, made a good impression on the matter of credibility and I accept his statement on the Pretty allegation that he did not remember "this inmate specifically". He further stated: "At no time would I deliberately assault an inmate." Mr. Dunbar had the confidence of his superiors at the Ministry of Correctional Services and later became Superintendent of the Algoma District Jail in Sault Ste. Marie. Presently he is Superintendent at the new (opened May 1977) Metropolitan Toronto East Detention Centre. As for Mr. Duncan, he indicated in his statement to a Commission investigator that, "Other than what is on the Misconduct Report, I have no knowledge of this inmate or the incident at all." Former correctional officer Albert Victor Reynolds also denied any involvement with Pretty.

Mr. Carter in his submissions on the allegations contended that Pretty's complaints should "be given little credence in that they are unfortunate inventions"; he then referred to the inmate's state of mind. He continued:

In addition to his bizarre attempt at escape through a clearly visible air duct, his two attempts at suicide, and his strange request to be segregated [this last

refers to the second allegation] Pretty's history includes two fires set in the Toronto Jail in December 1970 and convictions for robbery, auto theft, possession of narcotics for the purpose of trafficking, breach of the Food and Drugs Act and causing a disturbance.

There is supportive evidence, however, that Pretty sustained some injury. This appears in the medical summary notation of January 7 made by Dr. O. B. Dickinson, the Toronto Jail physician. "Finger twisted yesterday. Bruise and abrasion left groin and on left side of neck." It is improbable that this was self-inflicted. As to whether it was a result of any resistance by Pretty while being taken to segregation, this is, of course, a possibility. There is no direct statement by the correctional staff to this effect.

The difficulty of course, was that the matter was four years old. Unless there was something special to cause the correctional staff to recall this specific incident as against all intervening ones where inmates were taken to segregation, they were hardly likely to remember it. It was far easier for Pretty to recall one of the two times he was taken to segregation after his transfer from Millbrook.

Is Pretty's evidence unreliable for the reasons mentioned by Mr. Carter? I believe he was in error in his identification of Mr. Dunbar. If it was Mr. Duncan he meant, was he responsible for the injuries related by Pretty? It is frightening to think that an officer of his rank would have purposely, and not for any defensive or justifiable reason, struck an inmate. One hopes that this was not the case, and further that Mr. Duncan's reference to being called an insulting name by Pretty would not have brought on physical retaliation. As stated, Pretty's claim of injury was medically supported. Did it occur while he was struggling against going to segregation? The answer was not conclusive but it would appear that more than justifiable force was used. No doubt the attempted escape, the abusive language directed to a correctional officer, and to Mr. Duncan, the resistance to going into segregation, and the history of setting fires would not help enamour Pretty to the correctional staff. One seasoned veteran expressed himself during the hearings in somewhat this fashion: "If you don't bother them [the correctional officers] they won't bother you."

## SECOND ALLEGATION

According to Pretty, on January 14, 1971, he asked to be returned to segregation. At times inmates prefer the quiet of isolation to the noise of the general jail area. When segregation is voluntary, the inmate's privileges are those of the general jail population and are not restricted. It is difficult to understand why any physical action would be taken against one who is not resisting being placed in a segregation cell, but is entering voluntarily. Yet Pretty's statement was as follows:

On January 14, 1971, I think that was a Thursday, I asked a guard to go back to the hole and when I got there, the Sergeant and two guards beat me again. . . . When we got to the cell, the Sergeant, who had black hair and wore glasses, told me to put my hands against the wall above my head and he punched me in the ribs. This beating lasted a few minutes, it wasn't as long as the first one.

A Misconduct Report of January 14, shows that Pretty asked to be transferred to segregation, but it was not quite as voluntary as he implied. The entries of former correctional officer Skoyles and of C.O.5 Stanley Johnson (at that time a sergeant, equivalent to a C.O.4) were as follows:

On Jan. 14, 1971, at approximately 12:25 p.m. I was on duty in the old exercise yard when inmate Paul Pretty came down the stairs from 6 corridor to go out into the yard. Inmate Pretty stopped at 1 hospital and started to talk to one of the inmates in there. . . . I told inmate Pretty to stop lingering there and go out into the yard. He replied, "When I have finished here I'll go out." I then told him again to go out into the yard and he said, "Just wait until I've finished, will you."

At this point I became a little hasty and sent inmate Pretty back to the corridor. On realizing this and considering that this matter warranted the inmate being charged I informed Sgt. Johnson of my actions.

At this point, Sgt. Johnson had inmate Pretty removed from the corridor into the small reception area.

D. Skoyles.

The above named was taken to 2B segregation. He was very belligerent at this time. Although I attempted to deal with the above incident the man demanded to see the Superintendent. When told he would see the Superintendent in the morning he demanded to be placed in segregation. On arriving on 2B landing he refused to enter the cell. He had to be forced into the cell by Sgt. Lochhead and myself.

S. Johnson.

The statements of Johnson and Lochhead to the Commission's investigators were intended to be as exculpatory as possible. It was almost akin to the alternative pleading in a civil case of which law students are shown an example. "I did not borrow my neighbour's lawn mower. But, in the alternative, if I did, I returned it. If I did not return the mower, it was removed by some third person over whom I had no control. At all material times I returned the mower in proper working order. In the alternative if I did not, then it was damaged when I originally received it."

Johnson's statement was as follows:

I have refreshed my memory from the Misconduct Report submitted by officer Skoyles on January 14, 1971, and also the part written by me.

I don't remember this incident or any difficulty involving this inmate whatsoever.

However, if force had to be used then no more than was necessary to place



this inmate in segregation would be used and at no time was he deliberately assaulted.

Lochhead's statement was as follows:

I have read the allegation by Mr. Pretty in which he states that on January 14, 1971, he was assaulted by a Sergeant and two guards.

I do not recall this incident at all, but after reading the charge sheets on Pretty which state he refused to enter his cell in segregation I can only say that the minimum of force would have been used to place him in the cell.

Of course what Johnson and Lochhead were saying was that it was against jail policy to use more force than was necessary on inmates and neither would depart from that jail policy. The fallacy of this argument is that, if they could not recall this incident how could they recall that the force used in the incident was not excessive? Particularly is this argument weak when one considers that some of the allegations reviewed by this Commission were found to have occurred. Both Johnson and Lochhead had been mentioned by more than one inmate as being responsible for assaults. As to the validity of such other claims, one would have to examine each of them separately in order to ascertain all the circumstances and make a considered judgment. Johnson was mentioned several times and Lochhead on a few other occasions.

These two senior officers devoted much time and training to their careers and have worked hard. Neither they nor, with rare exception, anyone else confessed to excessive use of force. I am satisfied, however, after seeing them in the witness box on various occasions during our Commission hearings that they now have well learned what would be considered proper and what would constitute improper use of force, even without anyone having had to tell them. This applies to many of the other officers as well. Assuming that the reviewing of the various complaints will assist as a guide for future conduct towards inmates, we hope that the very fact that the allegations were aired (whether proven or not) will be a positive contribution to the subjects of recruitment, training, and duties of correctional officers.

In the above regard, and considering Pretty's second allegation, one need only inquire whether under all the circumstances it would not have been better for Skoyles to have gone along with his original plan and to have returned Pretty to his corridor. Pretty's "threat" must be considered in the light of his psychiatric problem. The returning of Pretty to his corridor was justified because he disobeyed the order to proceed to the exercise yard. Generally speaking, the time out of doors is considered a privilege. Returning Pretty to the corridor constituted the denial of a privilege, and hence there was a punishment of sorts for the disobeying of Skoyles' order, and it was commensurate with the breach.

Not all inmates, of course, consider the outdoor exercise yard a privilege, but in a jail with little else for diversion, even in January one would have to consider it a welcome break from routine. But even if this was not so, should Skoyles not have waited for a repetition of the disobedience, on a subsequent occasion, before laying a charge? Was the breach of the order in this



instance so important as to necessitate the laying of a charge? Was Skoyles' initial idea not to lay a charge as hasty as he said it was?

Discipline is most important in a custodial institution. But if one were to lay charges for every breach of an order, without differentiating between the various types of breaches, one would soon have the entire inmate population on charge. For example, an order to a slouching inmate to "straighten up", if not complied with satisfactorily, could be considered as having been breached and as giving rise to a charge. There have been allegations that some officers play games by issuing inconsequential and arbitrary orders knowing that they will be resented and disobeyed and thus give excuse for punishment. Skoyles' order in this case had more justification than that. But might not some humour have assisted the situation? Might not some patience have been exercised in order to bring about Pretty's compliance?

On a personal note, and by way of example, I recall a good-natured army sergeant whose duty it was to ensure that some men in a training centre were out on parade in the morning. Passing through the dormitory he saw one young soldier still sleeping while others were up and about. Instead of shouting orders, which may have brought about reluctant compliance and even some face-saving retort or mumble, he said, good-naturedly, just loud enough for the erring soldier to hear, "Well now, doesn't he look peaceful and comfortable. Let's allow him to sleep in this morning, or maybe to miss the parade. Or maybe some of his friends will be good enough to call him before that time." Then the sergeant moved on. Needless to say, in that disciplined society there was quick compliance with the quiet suggestion. That particular sergeant was generally more successful than most of the others when it came to man-management. The fact that the episode was remembered for so long, even by one who was a distant observer, indicates the effectiveness of such approach.

Oftentimes during our hearings one could not help but wonder how many incidents might have been avoided, or at least lessened, by the exercise of patience and humour on the part of a correctional officer. For, after all, it is he that has the control of the matter, at least initially. One sees the same thing in industry, in offices, and in the home where the low-keyed communication accomplishes so much more than the barked quick order. Part of it is a matter of temperament. If so, then why not concentrate on recruiting more of those people. Maybe a type of psychological testing similar to that adopted by some modern police forces in the hiring of recruits would help. Certainly, training should be employed to show the advantages of this approach, in carrying out duties. Of course there are some inmates who would not respond to this method. The matter is not that simple. How can a correctional officer working in an out-dated, overcrowded institution overburdened by overtime hope to be patient and in good humour at all times? But it is when he is not, and when the inmate is also hardened, ill-tempered, and recalcitrant that there is a clash with a resulting incident.

Sometimes each is equally to blame, neither willing to make the first move at accommodation for fear of it being misinterpreted as a sign of weakness or for fear that it will be rebuffed. So each continues like some neighbouring warring nations in a spirit of distrust and hostility, setting up and maintaining

the we-they syndrome. But if a breakthrough is to be accomplished in correctional work it must be at the line-officer level, and awareness of the humane approach should be one of the goals of a training program. The above is just one of the many areas in which it can be accomplished. It is, of course, more difficult to carry out such a program in the Toronto Jail with its ever-changing population than in a training centre where officer and inmate are together for much longer. Even in a jail setting the living unit segmented areas made possible in new institutions such as the Metropolitan Toronto East Detention Centre and Metropolitan Toronto West Detention Centre lend themselves more readily to rapprochement between correctional officer and inmate. This is, of course, aided by increased amenities for both and by better custodial facilities.

By way of summarizing Pretty's second allegation, the initial cause of the controversy was his failure to obey Skoyles' order. Skoyles then reacted by initiating the charge. Pretty most probably resisted being placed in segregation even though he had earlier indicated to Johnson that that was what he wanted. This was undoubtedly a bravado gesture prompted by the decision that he could not see the Superintendent until the following morning. If he was being put on charge, the procedure would have been to place him in segregation in any event. Whether he changed his mind or resented the way he was dealt with, it would appear that he resisted going into segregation. He was then forced into the cell by Johnson and Lochhead. This was admitted by Johnson in the Misconduct Report.

The questions are: (1) How much force was used, and (2) was that force excessive? Pretty was seen by a psychiatrist, Dr. M. Wilson, that night (at 8:00 p.m.) and by Superintendent Whitehead the next day. There is no indication that Pretty made any complaint about this second allegation prior to his letter of December 16, 1974. In his statement to the Commission's investigators he indicated that this allegation was the less serious of the two he made. At least, it lasted for a shorter time. Therefore, in answer to our posed question (1), although force was used there was no independent or corroborating evidence as to the amount or severity. As for question (2), since it is difficult to answer question (1) on the filed evidence, it is equally difficult to say whether or not the force used was excessive. Indeed, one is on the horns of a dilemma. The legal burden of proof is on the person making the allegation (in this case Pretty) to prove such allegation not beyond a reasonable doubt (as is required in criminal cases) but on a balance of probabilities (as in a civil case). On the other hand in weighing *credible* evidence, one should give more weight to a positive statement (Pretty's allegation that there was unjustifiable use of force) than to a negative statement (Johnson and Lochhead not recalling the incident but denying an assault because they would not act in that manner).

In this weighing of evidence, the key word "credible" has been purposely stressed. This poses a further question. How credible is Pretty's evidence? Without the opportunity of cross-examination of Pretty, Johnson, and Lochhead, it would be too speculative in this instance to make any definitive finding.

# Allegations Concerning Former Correctional Officers Torrance and Bennett

Incidents involving former C.O. 1 Edward Torrance and former C.O. 1 Glen Roy Bennett were additional cases heard by the Commission. In the chapter entitled "The Allegations", reference was made to the manner in which these incidents came before the Commission. Both of these officers had been dismissed prior to the completion of their probation period. The Commission confined itself to the allegations of assault and purposely avoided any consideration of the reasons for dismissal.

Some suggestions have been made that the probationary period should be reduced to six months. This would be a mistake. The present training program presupposes a one-year lecture and qualification period before promotion to the rank of C.O. 2. Since exceptions should not be made in this regard, the safeguard to the jail or correctional institution dictates the continuation of the one-year probation period.

The reader may conclude that the allegations of inmates Randolph Benn and Daniel Pearce against Torrance, and those of George Switzer and Stanley Malouf against Bennett, demonstrate the need for the Ministry to retain the one-year trial period for new correctional officers before they are granted permanent status.



## The Benn Allegation

*"I might have made a move. I could have probably made a movement to make Mr. Torrance think I was going to strike him. . . . There was a lot of friction in the Don Jail at that time between the officers and the inmates. A wrong move by an inmate can be thought of by a guard, that the inmate is going to attack him. I was talking to him in a belligerent manner and he could have taken this into consideration that I could have hit him."*  
(Randolph Benn)

*"... when I was in the corner of the cell after I had stripped down and I received – a last kick – I was lying there like a dog, you could say, because I was not about to get up and run around or anything and I got a vicious kick in my sides, my left side. . . . The whole part would have been forgotten by me if it had not been for the last kick I had received while lying on the ground. That is what set me off. I just don't go for that."* (Randolph Benn)

At the outset of the Torrance hearing, Mr. McRae advised that the allegations of assault against Torrance were two in number. One incident (involving Benn) occurred on May 1, 1975, and the second (involving Pearce) on May 2, 1975.

The evidence on both incidents was heard at the same hearing, for the reason set out by Mr. McRae: "There are interlocking witnesses who are witnesses on both incidents. They both involve the same correctional officer and



they are close together in point of time. I think it may be a little more difficult for you, sir, to keep the facts straight by dealing with them together but I will try and keep it as separate as possible and I think rather than call the witnesses twice, it would be much more expeditious to do it this way." The Benn and Pearce allegations are reviewed separately, however, for the sake of clarity.

After the completion of the hearings, briefs were filed by Mr. Thomas on behalf of Torrance and by Mr. Evans on behalf of the correctional officers other than Torrance. Mr. Ruby waived the filing of a brief.

## EVIDENCE OF RANDOLPH CRAIG BENN

At the time of giving evidence Benn was 22 and was serving a sentence at Camp Hendrie, a training camp under the jurisdiction of the Toronto Jail. He stated that he had a Grade IX education. He was born in Ontario and had been living for about 15 years in Toronto. He gave as a reason for leaving school at Grade IX that he "got into the dope scene and got strung up on speed for five years so I really was not doing anything except the odd job for three or four months".

Benn's record included breaking and entering, possession of narcotics, disobeying a court order, automobile theft, and possession of stolen property. He was arrested in March 1975 and sentenced on April 29. On May 1 he was working in the kitchen of the Toronto Jail.

MR. MCRAE. What did your work entail?

A. Carried meals around to the corridors during the meal serving time. . . .

Q. Did you have a brother in the Toronto Jail at that time?

A. Yes, I did.

Q. Where was he?

A. He was in one of the court cells. . . .

Q. Your brother — what is his name?

A. Patrick Benn.

Q. Patrick Benn was in corridor No. 7?

A. Right.

Benn said the incident involving Torrance occurred between 4:00 to 4:30 p.m. before the serving of meals.

A. One of the guards came down in the kitchen and told me my brother had come back from court that day. He had been in court that day for a trial. He is my little brother so I was worried about what he got. I was up tight when I walked upstairs. . . .

Q. Being a kitchen worker you were allowed to do that?

A. Just walked along. . . . I walked up to the grille.

Q. That is the grille at No. 7 corridor?

A. Yes. And I was looking to see for my brother and I never got to see him or talk to him face to face. One of the guards told me to get away from the grille; that they were busy sending the guys out from that corridor to the other parts of the jail, that were coming back and forth.

Q. Who was the guard that said that?

A. I don't know.

Q. Exactly what did he say to you?

A. "Get away from here, Benn, we are busy."

Q. Okay. He knew you, did he?

A. Yes.

Q. Do you know who that guard was?

A. No.

One can understand both Benn's concern and the reason for the correctional officer, being engaged in other duties at Corridor 7, not wanting an inmate in the way. Unfortunately there was insufficient communication between Benn and the correctional officer. It may have been that, had Benn explained his reason for being at the grille, he would have been allowed a short time to speak to his brother, or other arrangements might have been made for a later and more convenient meeting between the two. At any rate, what happened, according to Benn, was:

A. I walked away from there saying something to the effect . . . that the guard [who] told me to get away from there was a [deletion] and that he wouldn't let me speak to my brother . . . and a guard come up to me and told me to stand inside the dome. . . .

Q. What tone of voice did you use when you said it?

A. In a violent manner or with the feeling inside of me, a disappointed manner.

Q. You were up tight, I think you told us?

A. Yes.

Q. Did you say it loud enough you could be overheard?

A. Yes.

Q. Deliberately? Did you want to be overheard?

A. When it came out I didn't mean it to come out. You just don't go around saying things like that. It's just not good for you.

Q. Not good for you when you are in an institution?

A. Since it is indirectly swearing at an officer you can be thrown in the hole for it.

Q. Why did you say it then?

A. It came out before I could register.

Benn stated that the correctional officer who told him to stand inside the rotunda was Torrance.

A. Then the guards came up to me, two or three of them, and they stood around me.

Q. Who were those guards?

A. I don't remember all the faces. I only remember just the guard I was talking to.

Q. And who was that?

A. Mr. Torrance, and we started talking and he asked me, he said: "Who do you think you are?" and something to that effect: "Who do you think you are calling a guard a [deletion]?" I said something to the effect that I have been called a [deletion] by these guys before and I let it all hang out and I said that it goes the same for you, too, I guess.

Q. Meaning that if they can call you by that offensive name you can call them by that offensive name?

A. Yes. . . .

Q. Was there any other conversation?

A. Some trivial matter that I don't really remember.

Benn indicated that he was standing with his arms folded across his chest.

A. I might have made a move. I could have probably made a movement to make Mr. Torrance think I was going to strike him.

Q. What sort of movement would that be?

A. I don't know. I was standing there like this and I could have made a movement in front of Mr. Torrance and could have made him think I was going to strike him and he said, "Ah, trying to strike an officer, eh man?" . . .

Q. What was your attitude at that point?

A. It was belligerent.

Q. What happened then?

A. Then, after he said, "Trying to hit an officer," . . . He hit me in the stomach.

Q. Who hit you in the stomach?

A. Mr. Torrance. I went down on my knees and then I was grabbed by hands and rushed over to the top of the stairs at 8 corridor.

Q. Okay, so you didn't hit Mr. Torrance?

A. No.

Q. You say you could have made a motion as if you were going to hit him?

A. Yes.

Q. As far as you remember your arms were still folded?

A. Yes.

Q. Why do you say you could have made a motion as if you were going to hit him, if you believe your arms were still folded? It doesn't seem to be consistent.

A. There was a lot of friction in the Don Jail at that time between the officers and the inmates. A wrong move by an inmate can be thought of by a guard, that the inmate is going to attack him. I was talking to him in a belligerent manner and he could have taken this into consideration that I could have hit him.

Q. I take it from what you say you didn't hit him?

A. No, I am not that stupid.

Q. You are not that stupid. In fact you didn't hit him?

A. No.

THE COMMISSIONER. Pardon me, but did he or could he have interpreted it that

you were going to hit him?

A. Yes, sir.

Q. What was the motion that you made? Surely if you just had your hands across your chest that doesn't indicate a motion you are going to hit him, so you must have been doing something more than that?

A. I was standing there. I could have been moving my shoulders around or took a side step or shrugged my shoulders of some sort.

Mr. McRae asked about the force of the blow administered by Torrance.

A. It drove me enough so I fell on my knees, hunched over, grabbed for my stomach like – then I was grabbed and taken over to the top of 8 corridor stairs.

MR. MCRAE. All right. How were you grabbed and by whom?

A. I don't remember . . . by this time my arm had been twisted up behind my back.

Q. Just one arm?

A. My right arm.

Q. What about your left arm?

A. Somebody else was holding onto it, to my side, I guess. My right arm was twisted up behind my neck and I was up against the wall of the top of 8 corridor steps that lead down into the basement.

I think there is some significance in Benn's admission that his move could have been interpreted as an attempt to strike Torrance, particularly since he described his own actions as being belligerent.

Correctional officers are entitled to defend themselves and Torrance would not be expected to stand by and weigh with nicety whether he was going to be struck by Benn. The question also arises whether he could have stepped backwards and so avoided any anticipated blow by Benn. Even if he had stepped backwards he would also have had to consider whether Benn might move forward into him. The punch to the stomach could, therefore, have been considered as a defensive move and sufficient to deter Benn. The fact that he was not struck a second time, according to Benn's own evidence, would indicate that after Torrance had countered the expected attack there was no follow-up beyond the bringing of Benn under control by the other correctional officers. Subsequently, according to Benn, he was led down the stairs into the basement tunnel area of the old building by two or three officers, and a towel from a laundry bin at the bottom of the stairs was thrown over his face so that he was unable to see where he was going. "I started getting, I cannot say whether it was a closed fist, boots or kicks or anything because it was quite a few of them. I did not know who did them but I was bounced around all the way down that corridor."

He said that these blows landed "all over" him. In addition, his hair was pulled back and he was hit on the "back and sides". As to the degree of force used, he said the punches "did not hurt, but my arm hurt because it was twisted up around my neck. I could not make a move because if I moved my arm it would really give a sharp pain. . . . I was more worried about my arm being twisted."

Even in the administration of a come-along hold the force to be applied should be no more than is reasonably necessary. Of course, if an inmate struggles while in such a hold the correctional officer would be justified in tightening it, but again with no more force than is reasonably necessary considering the struggling of the inmate.

Continuing, Benn said that in the elevator he was "bounced around". Although the towel had been removed in the elevator, he was still bent over because of the hold.

Q. What do you mean bounced around?

A. Pushed, kicked, punched.

Q. Where were you punched and kicked?

A. I cannot say. I was very confused. When you get a succession of punches you cannot say which punch or which kick.

Q. Can you say how many times?

A. No I cannot say that either.

Q. More than once?

A. Yes.

Benn was unable to say whether Torrance was one of the correctional officers in the segregation area, nor did he positively identify Torrance as being one of the correctional officers who escorted him.

He was placed in No. 5 cell in segregation. This would be the cell without a bed, although he said that there was a mattress there.

Q. A mattress in the cell?

A. Yes, and I was thrown onto it, you could say. This is where I was lying down and somebody gave me a nice swift kick right in the side.

Q. When you were lying down?

A. Yes.

Q. Did you have any clothing on at all?

A. No.

Benn said that he was not given baby dolls until later. He was unable to identify the person who kicked him. "From there the succession of events . . . the guard and the nurse came right in or something like that, right away, and checked me over."

The relevant entries in 2B segregation log for May 1, 1975, were: "16:35 Randolph Benn placed in segregation. J. Whitely. . . . 16:45 Examined one superficial scratch by inmate on right thigh. Otherwise fit for segregation - uptight. P. Cabon. . . . 16:45. Interviewed Randolph Benn with Nurse Cabon. He appeared upset and emotional. He stated he did not want to speak to me at this time. He did state that he had 'called a guard a [deletion]' Nuttall."

Benn admitted that when nurse Cabon was in the segregation cell he (Benn) was "up tight".

Q. You were still nude, were you?

A. Yes, and he wanted to check me out to see if I had any marks on my body



and I stood up and spun around and said, "See. It doesn't matter; it doesn't matter if I got 10 stitches in my body anyway." I was that up tight I did not care.

Q. Did you specifically point anything out to him?

A. No.

Q. He indicates in a note, "Scratch by inmate on right thigh." Did you have a scratch on your right thigh?

A. Yes. It was nothing.

Q. What caused that, do you know.

A. No, I would not know.

Q. Did you tell him that you were up tight?

A. No, I was not together enough to sit down there and speak to anybody.

Benn stated that there was also "a pain in my [left] side but I did not bother with it at the time". This was in the area of his rib cage but there was no mark there. It would, therefore, appear that Benn sustained only minimal injury, other than the possibility of the pain in the area of the right ribs which he alleged.

Benn also described the visit by Nuttall.

A. I think he was talking to me then, and he was sitting in the cell there with me, and he said, "What happened?" I said, "Well, I have gone and called the guard a [deletion]." Then I was quite upset. I was ready to cry, I guess.

Q. You mean when Mr. Nuttall was talking to you?

A. Yes, so he said, "All right." He sensed the vibes and he got up and he left and he said, "I will speak to you after supper." Then he came back after supper and I told him the score then.

Q. You told him what had happened?

A. Yes.

This again indicated the professionalism of Nuttall. He was one of the most capable correctional officers that appeared before the Commission and should be given the opportunity of proceeding to superintendent rank in some institution in Ontario. He could also make a valuable contribution to training, for he carried out in practice what he advocated in theory.

Benn said he told Nuttall that he had called a correctional officer an obscenity, but he did not think he told him about the incident of the alleged striking in the rotunda. Nuttall gave him the baby doll garment that night, and the next day Dr. W. Hills saw Benn. Benn said he told the doctor that he had a sore side and the doctor told him "something like" it was a pulled or ruptured muscle. Benn alleged that this was a result of the kick he had received in the segregation cell.

A. This is when I was in the corner of the cell after I had stripped down and I received – a last kick – I was lying there like a dog, you could say, because I was not about to get up and run around or anything and I got a vicious kick in my sides, my left side.

Q. With a boot?

A. Yes.

The Misconduct Report indicated that Torrance, C.O. 2 Joseph Peake, and C.O. 2 Robert Young escorted Benn to segregation and "used the minimum amount of force necessary" to keep him from "further injuring the officers and himself". The report also stated that "all the way over" to segregation Benn was "very violent and he was trying to punch and kick" the officers. In fact, it was Minarek, not Peake, who was the third officer with Torrance and Young in the escort.

At the hearing before the Superintendent, Benn admitted only to the profanity and denied striking Torrance on the shoulder as alleged in the Misconduct Report. He was, however, found guilty of the misconduct and was sentenced to 10 days in segregation with special diet. At the inquiry Benn was asked, "Did you punch officer Torrance in the shoulder?" and he replied, "No, I don't think so."

Later, he was more definite, stating that he did not strike Torrance.

During his evidence, and referring to his trip to segregation, and particularly to the statement made by Torrance in the Misconduct Report, Benn stated:

A. I had my arm twisted up around the back of my neck and if I made the wrong move that arm could have broke, so on my way down there I was struggling for my arm's sake, if I was at all, and I wasn't about to try and take a punch at somebody because if I took a swing I would be moving that arm and that arm could have easily have broken. Like my hair was pulled back and I was like this. My arm was like this and I was like this, bent over with a towel over my face. My hair was pulled back and my arm up around my neck. I had three guards on me.

Q. Were you trying to punch or kick any of the guards?

A. I was saying on my way, all the way to the hole, I was saying: "I didn't hit you." I was trying to relay the fact that I didn't hit him. It is like all of a sudden out of the blue: "Ah, trying to hit an officer, eh, assault an officer?" It blew my mind and I said, "What are you talking about?" And then he hit me.

Q. My question for the record was, what happened on the way to segregation. Were you violent on the way to segregation, were you cursing or kicking out at them?

A. I don't remember the exact curses I could have said, but it was, whatever it was, it was related to my arm being twisted.

Q. Did you try and hit or kick any of the guards?

A. No.

Q. He says you were very violent and were trying to punch and kick the officers. You say that is just not true?

A. No.

Q. Did you try to punch or kick any of the officers at all on the way to segregation?

A. No.

Q. He says: "We used the minimum amount of force necessary to keep this inmate from further injuring the officers and himself." What do you say about that?

A. It says minimum amount of force necessary to keep this inmate from

further injuring the officers. Minimum? That is wild. That is a farce. There was no injury that I used on any officer, related to any officer on my part, and minimum force was like almost breaking my arm, my arm pulled back, me hunched over, a towel over my face? That is not minimum force.

Q. All right. You say that you did not attempt to kick or punch the officers?

A. I was in no position.

Although Benn stated earlier that he was unable to identify the correctional officers, and more particularly unable to identify Torrance as one of the correctional officers escorting him to segregation, because of the towel over his head, he did refer to three correctional officers escorting him. And Torrance in his statement indicated that he, together with Peake and Young, were the escorting officers.

Concerning what happened in the rotunda:

Q. You have already given evidence with respect to this, but I want it clarified. In the dome the only violence used by anybody was one punch by Mr. Torrance and he hit you right in the upper part of the stomach or bottom part of the ribs?

A. Yes.

As for the trip to segregation, the alleged twisting of his arm "up around my back" could be classified as a come-along hold. It is unfortunate that no senior officer was present to ensure that the hold was with the minimum amount of force required and did not constitute an abuse of force.

Benn indicated that the injury to his side which he alleged was sustained in the segregation cell had caused him trouble ever since.

A. I have just gotten over it again. . . . I was transferred up to Camp Hendrie, a camp up near Barrie, Ontario. While I was up there I had a bit more trouble with it. I was running around and I fell on it, fell on my side. It was bothering me again and I had to go to the hospital. I had my ribs taped up. Q. It was the result of the fall?

A. Yes.

Q. It had healed by the time you left?

A. I was still aware of it healing. I don't know too much about the ribs.

A medical status summary was produced which showed an earlier complaint, March 12, of pain in the left chest, and a record of May 2, "Kicked in left chest yesterday. No marks." The alleged incident occurred on May 1.

The closing questions by Mr. McRae were:

Q. Is there anything further you can tell the Commissioner of this incident that I haven't asked you about?

A. I would just like to say an unnecessary aggravation, that is all. The whole part would have been forgotten by me if it had not been for the last kick I had received while lying on the ground. That is what set me off. I just don't go for that.

Q. You can't tell us who gave you that kick?

A. No.

Q. Is there anything else?

A. No.

It appears from the above that Benn was not complaining about being struck in the stomach by Torrance while in the rotunda, which would lead to the inference that this was a result of his name-calling and his admitted motion which could have been interpreted by Torrance as a threat. As for the alleged kick in the chest, although the complaint of pain appeared to be the same as that made a month and a half earlier, there might have been an aggravation as alleged. Benn did seem to feel a sense of injustice at receiving this kick from a correctional officer while he was lying motionless in the segregation cell.

As for telling anyone other than Dr. Hills on May 2 of the complaint about his left chest he admitted he did not tell nurse Cabon, and he thought he did not tell Nuttall either. He said that the reason he told Dr. Hills the next day was: "I had been having quite a bit of trouble trying to position myself in a sleeping position and I explained it to him. . . . I was figuring on getting medication for it and I did not receive any medication for it."

Benn said he did not tell the investigating officer, Mr. Whitely, about the alleged assault in the segregation cell, nor did it appear that he told the Superintendent, who dealt with the misconduct charge.

There was some discrepancy between the Misconduct Report of Torrance and the allegation of Benn that he had been struck first, and Benn indicated that he was asked by Mr. Whitely whether he wished to lodge a complaint. Apparently the Ministry was then notified and Inspector Norman L. Jones conducted an investigation. Benn complained that when he was interviewed by Mr. Jones, the inspector told him "that he did not believe anything that I had said. I said, 'I told you what the score was and I do not care whether you believe me or not.'"

In answer to questioning by Mr. Thomas, counsel for Torrance, Benn stated that he had not had any problems previously with Torrance, nor had he been called any names by Torrance.

MR. THOMAS. Did you, at any time, lay a charge against Mr. Torrance for assault?

A. No.

Q. Did you, at any time, write any letter of apology?

A. Yes.

Q. To whom?

A. To the Superintendent.

Q. Did you do that on your own?

A. Mr. Jones had . . . told me that he thought I was lying and that, after his investigation, which he would be conducting that day and the next day, if he found out that I was lying in any way he would charge me with public mischief for lying to him in the statement that I made and that the guard, Mr. Torrance, would be bringing in the outside police and have me charged with assault for hitting that guard, which he said that I had done, which I said I hadn't done.



He went out and investigated it and the next day or the day after he came back and he showed me two pieces of paper. He never showed me the writing on them, but he read them to me and he says, "Now, what can you tell me about these witness statements here?" And he read them out to me – he wouldn't show them to me. He said that I struck Mr. Torrance on the left shoulder, either shoulder – I don't know what shoulder. This is what he was reading off these statements to me.

I sat back and I looked and I said: "Oh, I'm being shafted." I said that those statements are [deletion]. I said, "I can't understand where you would get those statements." He said, "Well, these witnesses here are two inmates and they say this is what went on." He said to me, "Do you think you could have blacked out when this whole thing went on?" I said, "No." Because here he is trying to tell me [he] has these two statements saying that two witnesses say they seen me hit Mr. Torrance on a shoulder. This is where I wrote – I got myself to thinking that I am being shafted and these people are – like I believed them. I believed Mr. Jones was reading these statements, so he said, "Well, we can do this, we can write a letter of apology to the Superintendent saying that you withdraw all allegations and say that you are sorry to Mr. Torrance." Well, I said, "Could I put it in my own words?" He started saying some things and he said, "What about this?" I said I will put it down and I will withdraw allegations against Mr. Torrance that I have made. . . . Then I thought this would be the end of it.

Q. Did you write that out yourself?

A. Yes.

Q. And you signed it, did you?

A. Yes.

Q. And was Mr. Jones present when you wrote that out?

A. Yes.

Q. You have already indicated to us that but for the kick that you received, as you related in the segregation area, you would have forgotten about the whole thing?

A. Yes.

Benn further related his conversation with Mr. Jones:

A. So I said, "I do not want to go to court again because I have got better things to go through than having to go through any more court trials." Because I had been going through them all for years and years and I am sick and tired of them. So I said we will pass on the complaint I made and I will write out a statement saying that I would withdraw all the allegations if and when this whole thing will pass over. And he said why not. He said, "Write this letter to the Superintendent and the whole matter will be forgotten."

Q. That was your idea to do that. You are not saying that Mr. Jones told you to write the letter. You told him that in light of the statements you thought you were being shafted but you had had enough of this court stuff and you were prepared to withdraw everything if everything was forgotten. That's it, isn't it?

A. No. He said, now he said, "Look what you got going against you." He said



after he read the statement, he said, "You can go through with this and you are going to be charged. I am going to wait until the last week of your bit before you get out. I can have you charged and you may be put into another detention." This is what I was thinking. I thought I might be put in another detention.

Q. Well, he did not tell you that?

A. No he did not tell me that, this is what I suspected.

Q. So you wrote this note to the Superintendent and signed it?

A. Right.

Q. And as far as you were concerned that was going to be the end of the matter?

A. Yes.

The above constituted an allegation against Mr. Jones of prompting, directly or indirectly, a letter of apology and a retraction of the allegation against Torrance.

## EVIDENCE OF NORMAN LEONARD JONES

Mr. Jones was an employee of the Ministry of Correctional Services, working since December 1972 as an inspector. His prior experience in investigative work consisted of seven and a half years as an Ontario Provincial Police constable.

He described his duties as inspecting jails and investigating complaints for the Ministry. Benn's allegation came before the Director of the Inspection and Standards Branch.

A. I received instructions from Mr. Teggart, he is the Director of the Inspection Standards Branch. Mr. Teggart advised me that a Miss Carol Eldridge at the jail had made a complaint that the staff at the Toronto Jail had used unnecessary force against inmate Benn.

MR. MCRAE. These were verbal instructions?

A. These were verbal instructions. On receipt of these instructions I then went down to the Toronto Jail.

Q. Would this be Monday, May the 5th?

A. That is right. . . .

THE COMMISSIONER. What was the chain of this complaint of Miss Eldridge's? Was it to the Ministry or was it through the Superintendent of the jail, do you know?

A. I believe the complaint would go from Miss Eldridge to the Superintendent of the jail, then from the Superintendent to my office, then back to [me].

Mr. Jones's investigation of the Benn incident comprised interviews with Miss Eldridge, Benn, Torrance, and inmates Arthur James Monckton and

Anthony Joseph Tourangeau (also known as Samson). He also examined the segregation log, which included the notations by nurse Cabon of a superficial scratch on Benn's right thigh.

The written statement obtained from Miss Eldridge by Mr. Jones was as follows:

On Thursday May 1st, 1975, at approximately 1630 hrs., I was conducting an interview in booth No. 5 in the dome of the old building. My attention was drawn from the interview by yelling. I saw that there was an altercation between inmate R. Benn and Correctional Officers E. Torrance and R. Young. This was taking place outside the medical office. Correctional Officer Young was holding inmate Benn by the left arm. Mr. Torrance was holding the inmate by the hair, pulling him forward. Inmate Benn was in a bent forward position. Mr. Torrance would be in a position to the right of inmate Benn and slightly behind him. I observed Mr. Torrance strike inmate Benn two or three times with his open left hand. These blows or smacks would strike inmate Benn on the left side of the head. I shouted something to the effect, "Hey, cool it." No more blows were struck. Mr. Whitely came about this point and inmate Benn was taken away. I do feel Mr. Torrance used unnecessary force in dealing with inmate Benn. I admit I did not see what took place to cause the incident.

In his report Mr. Jones stated that he had Benn strip to the waist so that he might physically observe any injuries and that "no bruises on the upper portion of his torso were visible".

Mr. Jones's conclusion was as follows:

I can find no evidence to support the allegation of Miss Eldridge that Mr. E. Torrance used unnecessary force in dealing with inmate Benn. It is debatable whether a blow from Mr. Torrance onto inmate Benn's stomach was the correct form of retaliation. However, in all fairness to the officer, it was judged as an act of self-defence. It is interesting to note inmate Benn did not complain of slaps to the head. I, therefore, judge the allegation of unnecessary force as unfounded.

Mr. Torrance's counter-allegation of interference by Miss Eldridge I found to be founded. Miss Eldridge clearly indicates she had no knowledge as to what took place prior to hearing the noise of a scuffle in the dome. Her position as a social worker at the jail affords her the opportunity to submit reports as to her observations, however, not to directly interfere with correctional staff and inmates. It is recommended that Miss Eldridge be made aware of this by the Superintendent. This recommendation is made in a way so as not to restrict Miss Eldridge in reporting such matters, but rather than having inmates feel at that instant, they have her support. Therefore, creating a hazardous situation which, depending on the number of inmates involved, could readily start a riot.

I am in agreement with Mr. Jones that the proper action by a social worker or any other person in the jail who has a complaint to make about

the treatment of an inmate is that such complaint should be made directly to the Superintendent. In fact, it should be obligatory that the complaint be made. A social worker, or any other person on staff not in the capacity of a correctional officer or senior officer or in the superintendent category, should not openly and directly interfere with correctional staff no matter how wrongly they might think the staff is acting at the time, for to do otherwise would cause open conflict between the social worker or other jail employees and the correctional staff. It is most important that there be mutual co-operation and harmony between correctional staff and social workers, volunteers, or others. To openly challenge the acts of the correctional staff in the presence of inmates would not only destroy the mutuality of confidence necessary, but might well aggravate an existing situation and create a greater hazard at the moment.

In his evidence before the Commission, Mr. Jones said that Benn appeared to be surprised that an investigation was taking place.

A. At that time I asked him if he wanted any charges of assault laid against Mr. Torrance. I also advised him that Mr. Torrance could also lay charges of assault against him.

MR. MCRAE. At this point, did you tell him that?

A. At this point, before we went any further, because if Benn wanted the charge of assault laid, then I would have to step out of the picture and advise Metro Toronto [Police] of the allegations and let them come and do the investigation themselves.

Q. But I was wondering, weren't you a little premature in advising Benn that Mr. Torrance might lay a charge of assault against him, when you hadn't heard any allegations, or perhaps you had, that he had assaulted Torrance?

A. I had. Yes.

Q. You had heard?

A. Right.

Q. Okay. So what was his reply when you asked him if he wanted Mr. Torrance charged?

A. He said no, he didn't want any charges laid whatsoever.

This referred to the initial interview with Benn, at the end of which Mr. Jones took a statement from him, including a statement that Benn did not want any charges laid.

Mr. Jones continued with his investigation and two days later returned to re-interview Benn, who then, Mr. Jones indicated, amended his statement to the effect that he was waving his arm around and Torrance might have mistakenly thought he was going to strike him.

Q. And what was the result of that?

A. Well, Benn then said that he wanted the investigation dropped. He didn't want to go any further with it. He said that he just wanted to forget the whole thing. . . . I said that, just to forget the whole thing, he just couldn't forget it. I wanted something in writing from him before I would cease the investigation.

Q. Did you tell him that?

A. Yes, I told him that.

Q. Did he prepare something in writing?

A. Yes, he did.

The subsequent handwritten note by Benn was filed as an exhibit.

Mr. Jones stated that he did not direct Benn or assist him in the writing of the statement.

With reference to Benn's apology, the following appeared in Mr Jones's report.

On May 6th, 1975, I re-interviewed inmate R. Benn, wherein I confronted him with observations of fellow inmates against his recollections of events. Although inmate Benn would not admit to striking Mr. Torrance, he did admit to waving his arms around while in the dome. Benn suggested the possibility Mr. Torrance thought he [Benn] was about to strike him. I requested from inmate Benn a retraction of the allegations presented to me on the 5th of May 1975, which he did.

Benn's evidence that Mr. Jones had said he would charge him with public mischief if he found out later that he was lying was brought to Mr. Jones's attention. Mr. Jones stated that there was no truth to that statement "whatsoever". It would appear that there was a misunderstanding between the two of them. It would be advisable in the future to have such conversations, which might be open to later questioning by an interested party, taped and transcribed with a typed copy given to the inmate or correctional officer concerned. Mr. Jones also stated that the evidence of inmates Monckton and Tourangeau was that Benn had, in fact, struck Torrance.

Mr. Jones indicated that he was not hampered in his investigation in any way and that he had had the full co-operation of the jail staff. The Commission also had full co-operation from the jail staff. Whether the evidence given was complete and truthful on all occasions is another matter, to be determined separately for each allegation.

## EVIDENCE OF PIERRE CABON

Nurse Cabon confirmed his entry in the segregation log about a superficial scratch on Benn's right thigh. The segregation gown was removed from Benn to permit the examination, he said.

MR. MCRAE. And you looked him over?

A. I looked him over, yes.

Q. Did you examine him in any way other than visually, by looking at him?

A. No. When I looked at him – his body for injury, there was none.

Q. Did you ask questions?

A. I asked questions of him, if there was anything wrong. He did not answer at all. He was up tight, as I saw, and very angry.

Cabon also stated that Benn did not complain to him of any assault. He further stated that "every day the doctor goes and examines every inmate in the segregation cells".

It is assumed that there would be communication between the nurse and the examining doctor, at least to the point of the examining doctor reading the segregation log entry made by the nurse; and that if there was injury of any consequence the nurse would make a separate written report to the doctor and indeed would make a point of speaking to the doctor.

## EVIDENCE OF CAROL ELDRIDGE

The evidence of Miss Eldridge was that she had worked as a correctional classification counsellor at the Toronto Jail for almost two years and was, at that time, the co-ordinating supervisor over the other classification officers.

She was in the process of interviewing an inmate in a booth in the rotunda area when she heard a commotion. "I looked out and at that point I saw inmate Benn and Mr. Torrance, and another officer." She identified the other officer as C.O. 2 Robert Young.

A. It was Mr. Young who would have been holding one arm. To the best of my recollection, Mr. Torrance had inmate Benn's head down by the hair and he slapped him a couple of times. At that point —

MR. MCRAE. Where did he slap Benn?

A. To the best of my recollection it would be the side of his head.

Q. What with?

A. His hand, his open hand.

Miss Eldridge said that she got up from the bench she was using for the interview and went "outside the area" where she was interviewing and yelled out, "Cool it." She stated that Mr. Whitely then came out of the sergeants' office nearby. She said that Benn was taken later from the rotunda down the stairs to the basement.

She did not see Benn being struck in the stomach. She was unable to recall whether he had gone down on his knees, and she also advised that she had not seen what had provoked the incident. In any event, it was her opinion from what she saw that there was no necessity for Benn to be struck in the manner that he was, and from what she saw there was no justification for the force applied to him.



- Q. Did you see any justification for the force that you saw applied to him?
- A. No.
- Q. Pardon?
- A. No. But again, I had not seen what provoked it.
- Q. Right. And you made a report to the Superintendent of the institution?
- A. Yes, I did, the next morning.

## EVIDENCE OF CHESTER WILFRED McDONALD

This inmate was being interviewed by Miss Eldridge at the time of the incident.

He stated that he heard some noise "like someone being hit" and that he got up and looked out and saw two correctional officers holding Benn and another hitting Benn.

MR. MCRAE. Two guards holding onto Randy Benn and one guard was hitting him?

- A. Yes. . . .
- Q. And how were the two guards holding him?
- A. One had ahold of one arm and the other had ahold of the other arm.
- Q. And you say one was hitting him. Where was he being hit?
- A. In the stomach and around the face.
- Q. In the stomach and around the face?
- A. Yes.
- Q. And how many times did you see Benn get hit? . . .
- A. Twice.
- Q. You say you saw him hit in the stomach and around the face?
- A. Yes, I could not see too well from where I was standing but I could see that the guard was hitting him twice. . . .
- Q. Could you see where the blows were landing?
- A. No, I could not see where the blows were landing, no.
- Q. Are you sure there were two blows struck?
- A. Yes. . . .
- Q. But you were not able to see the blows landing?
- A. No.

McDonald identified the correctional officer who did the hitting as Torrance. He stated that it was after that that Miss Eldridge "ran over and she said cool it and they stopped".

McDonald indicated that Benn then was taken out of the rotunda area.

- A. They were out of sight and I heard Randy yell, "My arms! My arms!" and I looked over again and I seen about three or four guards going down

the stairs and one guard had ahold of one arm and the other guard had ahold of the other arm and they had his arms twisted up behind his back and pushed him down the stairs.

Q. Was he struggling?

A. Yes, he was.

## EVIDENCE OF ANTHONY JOSEPH TOURANGEAU

This inmate was 21 at the time of giving evidence. He was born in Toronto and lived with his grandparents. His record went back to October 1972 and included charges of possession of a stolen automobile, possession of narcotics, theft of an automobile, assault, fraud, and false pretences. He was also known as Anthony Joseph Samson (also spelled Sampson). He had been an inmate at the Toronto Jail from February 10, 1975, until giving evidence on July 8.

At the time of the Benn incident, May 1, he was employed as a corridor man for Corridors 7 and 8. He stated that he knew Benn and Benn's brother.

When the Benn incident occurred, Tourangeau said, he was sitting on a bench opposite Corridor 7. Benn had started to talk to his brother when Torrance ordered him to move along a couple of times. Tourangeau described the second request as being more like an order. He said that Benn questioned Torrance:

A. He said something to the effect of why should us [deletion] not be able to talk to other inmates around here.

MR. MCRAE. He didn't refer to Mr. Torrance as a [deletion]? He referred to himself or other inmates by that word?

A. He indicated at first that Mr. Torrance was a [deletion] too, as well. . . .

Q. He referred to Mr. Torrance by that word initially?

A. Yes.

According to Tourangeau, Benn remained at the grille for a minute and Tourangeau believed that he then asked another inmate to try and talk to his brother for him. Benn then left on his own to go to the rotunda. Tourangeau described Benn as being upset. He saw Benn and Torrance after that in the rotunda. He was unable to hear their conversation.

A. I seen Benn take some sort of a movement, make some sort of a movement as if he was going to strike at Mr. Torrance.

Q. What kind of movement did you see?

A. I seen Benn drop his arm, sort of fast.

Q. Drop his arm? And you indicated his arm came away from being across his chest, and the right hand sort of cocked back in a fist like that?

A. Similar to that.

Q. All right. Did he swing?

A. I'm not sure if he swung or not. That's when Mr. Torrance lifted his arm and hit him in the stomach.

Tourangeau indicated that because of his angle of sight he was unable to say whether Benn did hit Torrance first. "He could have, or he could have attempted to, but didn't succeed."

Shortly after that other correctional officers arrived and took Benn by the arms out of the rotunda. Tourangeau acknowledged that Benn struggled "quite a bit" at the top of the stairs, moving from side to side, throwing his head back and screaming, "Watch my arms, watch my arms." Tourangeau stated that he watched Benn being escorted to the bottom of the basement stairs and "they went around the corner". He did not see a towel being put over Benn's face.

Tourangeau expressed fear that there might be reprisals against him by other inmates as a result of his evidence and this was another aspect of the we-they syndrome, expressed at this time by an inmate.

The Commission was unable to grant Tourangeau's request that his name not be used, but a second request, that he be transferred to another institution, was left with Commission co-counsel, Mr. McRae, who said: "I think we can be of some assistance there, Mr. Commissioner. I am sure that the Ministry will co-operate in that regard."

## EVIDENCE OF ARTHUR JAMES MONCKTON

This inmate was 17 at the time of giving evidence. He lived apart from his parents, who were separated. On May 1, 1975, he was convicted of breaking and entering and theft. He was born in Toronto and lived all his life in Toronto, completing Grade X at a vocational school where he was "learning to be a cook". He completed only one year of a three-year course in cooking and left school at 15.

He was in the Toronto Jail at the time of the Benn incident, and was working as a corridor man for Corridors 7 and 8 with Tourangeau. He was sitting on a bench with Tourangeau outside Corridor 7 when Benn came up the stairs, wearing "kitchen whites". Monckton's evidence was similar to that of Tourangeau, except that he did not indicate Benn had spoken to his brother who was in Corridor 7, but rather that he had asked for his brother.

A. Mr. Torrance told him that he could not see his brother right now, we were too busy around there. . . . I can't remember the exact words, but Benn had started to walk away and he called, I think he said to somebody that all these guards out here were so and so's.

MR. MCRAE. What do you mean by so and so's?

A. He said that all the guards around here are [deletion].

Monckton said that the statement was made to another inmate. He said that Torrance would have been able to overhear it. Benn then went unescorted to the rotunda and Monckton said that he and Tourangeau moved to a bench outside Corridor 8 to have a better view.

A. Benn had made some kind of a movement, we couldn't really tell if it was a movement to take a swing at Mr. Torrance or whether it was just a plain movement. . . . You could see parts of his shoulders moving around a bit but I couldn't tell if it was a movement to strike Mr. Torrance or not, but then Mr. Torrance had hit him in the stomach and Benn went down to his knees.

Q. Did Mr. Torrance hit him in the stomach before or after the movement you described?

A. After the movement.

Monckton stated that after Torrance struck Benn other correctional officers appeared and grabbed Benn by the arms. He stated that Benn was struggling. He was not sure whether Benn was held by the legs as well. He did not see a towel put over Benn's face but thought that this could have occurred without his seeing it. He described Benn as being upset on the day of the incident. "Usually Benn was an easy-going fellow, but he was all hyped up about his brother and what his brother was going to get in court that day. So I guess he really wanted to see what was going on with his brother."

Although the evidence of Tourangeau and Monckton is not reported in full, the part that is reviewed shows that a different version of what they saw was given before the Commission than was apparently related to Inspector Jones. The difference was important, being relevant to whether Benn had made a motion that might have been interpreted by Torrance as an intention to strike, or whether in fact Benn had hit Torrance. Benn had conceded the former but not the latter. It was Mr. Jones telling Benn that the two inmates had seen an actual striking that prompted Benn's apology. Without in any way impugning any impropriety on the part of Mr. Jones, it should be remembered that he did not have the advantage of a full inquiry with counsel presenting evidence and cross-examining, as did the Commission. For this reason, it might be considered of assistance to widen the powers of the inspectors when they conduct Ministerial inquiries and allow them the assistance of Part 2 of *The Public Inquiries Act* (1971 Statutes of Ontario c. 49). Part 2 of the Act requires (*inter alia*) a person subpoenaed to give evidence on oath (or affirmation) at an inquiry to produce specified documents.

## EVIDENCE OF CHARLES ROLAND LEUTZ

C.O. 1 Leutz stated that at the time of the Benn incident he was on Corridors 3 and 4 on the second floor. He heard a shout or scream and looked into

the rotunda area and saw Torrance holding Benn in an armlock and by his hair. He stated that Torrance was bringing Benn up from his knees and beginning to march him out of the rotunda. He heard the social worker, Miss Eldridge, yelling "cool it", and that was the extent of his knowledge of the Benn incident.

## EVIDENCE OF JOHN MINARIK

C.O. 2 Minarik had approximately 10 years' experience at the Toronto Jail. He was on duty on May 1 and was about to leave the jail at the end of his shift when one of the other correctional officers called out that there was a problem in the rotunda. He started to run to the area. He saw Miss Eldridge standing close to the centre of the rotunda waving her arms. "Making her wings work or something . . . I knew when I saw her face there was something wrong for sure." He said that "she was just staring, perplexed and upset". He did not hear her say anything.

He saw Torrance and Benn struggling and came from behind Benn and grabbed one of his arms. He had neither heard Miss Eldridge call out nor seen Torrance strike Benn. This would probably indicate that he had arrived after the initial incident.

He heard the Assistant Superintendent, Mr. Whitely, order Benn taken to segregation. He said that he was one of the officers acting in the escort, going as a "back-up" man. He stated that Benn walked into the segregation cell and that nurse Cabon arrived, as did also C.O. 4 Robert Nuttall and Mr. Whitely.

Minarik recalled what happened after he had put a restraint hold on Benn.

A. He didn't settle down. That's why I stayed behind as a cover. He was still pounding and jumping and yelling, etc., through toward the elevator.

Q. Did anyone hit him or kick him as he was being escorted?

A. No. They were holding him.

Minarik denied Benn's allegation that a towel was taken from a bin at the bottom of the stairs in the basement area and put over his face. Minarik was of the belief that Benn had taken his clothing off himself prior to entering the segregation cell.

Q. Did anything happen after he got in the cell? Was he kicked?

A. No, sir. The door was slammed closed. We had to slam it to put the lock on it, and after that is when I moved back and nobody got in at all until the nurse.

Minarik denied that Benn was carried with an officer on each leg and one on each arm through the basement tunnel. It was his evidence that there were two correctional officers walking with Benn, one on each side



of him and that he (Minarik) was to the rear, and that this was also the situation as they entered the elevator and while they were in the elevator. He denied Benn's statement that he was "bounced around all the way down the corridor and that he was kicked and punched".

According to Minarik, Benn was in an agitated state and only the necessary force was used.

## EVIDENCE OF ROBERT YOUNG

C.O. 1 Young commenced his employment at the Toronto Jail in February 1975. He was educated in Scotland and had the equivalent of a Grade XII education. He had no prior experience in correctional services. He stated that he received a two-week orientation course conducted by C.O. 5 Stanley Johnson. He had worked in the jail three or four weeks before taking the course.

Young said that it was he who told Benn to move on because the correctional officers were busy at the time. He recalled Benn dressed in kitchen whites. He said that, after he told Benn to move, Torrance came over and took Benn by the arm and said, "Come on, Benn, move back to the kitchen." Young said that Torrance put his hand on Benn's shoulder. Benn then walked away, after which "he turned and called us a name". Young said the obscenity used by Benn was directed at him and Torrance. Then, "me and Mr. Torrance walked over to him and asked him what he called us and he repeated that".

Following this, Young said, Torrance "sort of ushered" Benn into the rotunda. Young remained with Benn, and Torrance "proceeded into the Chief's office and came back out". Young said Benn's attitude was arrogant.

When Torrance returned from the Chief's office, Young said, he again questioned Benn as to why he had used the obscenity. During this time Young had his hand on Benn's left arm.

A. I wasn't exactly holding it. It was a precaution . . . making sure his arm didn't come up. He brought his right arm across and caught Mr. Torrance in the shoulder.

Q. So all Mr. Torrance said was, why did you call us that insulting name, and as soon as Mr. Torrance said that Benn brought his right arm back, his right arm up, and caught him in the shoulder? Where were Benn's arms just before that?

A. I seem to recall them being across his chest.

It was Young's evidence that Torrance was hit by Benn on the left shoulder, following which Torrance "drew back and punched him in the stomach". Then he (Young) "made a grab for his left arm and Mr. Torrance

made a grab for his right”.

Q. Did Benn go down?

A. He keeled over, doubled over. We grabbed his arm and forced him down.

Q. You forced him down on his knees?

A. On his knees, yes.

Q. You had one arm and Mr. Torrance had the other?

A. Mr. Torrance had the other.

Young said that Miss Eldridge then came over and started to shout.

A. I had his arm up his back and my arm around his neck.

Q. You may have been holding his hair?

A. I may have been holding his hair, yes.

Q. Did you hit him on the head or in the face area?

A. No.

Q. Did Mr. Torrance?

A. Not to my recollection.

Q. Could he have, without you recollecting it?

A. No, Mr. Torrance was struggling and he grabbed his right arm so there may have been but I don't think so. If there was a blow, it was not a deliberate blow to his head.

Young said that following Miss Eldridge's calling out, Mr. Whitely came out and asked what had occurred. Torrance advised that Benn had swung at him and Mr. Whitely then said to take Benn to segregation. He said Benn was struggling as they went along to 2B segregation.

Young did not recall Benn having a towel thrown or held over his face while he was proceeding through the tunnel. He denied that Benn was kicked or punched by any correctional officer while he was being escorted to segregation or that he was assaulted in the elevator. He also denied Benn's allegation that he was kicked while in the segregation cell.

## EVIDENCE OF THOMAS BELL

C.O. 3 Bell had worked at the Toronto Jail for approximately 17 years. His training was at the Toronto Jail. He described his duties as being those of Admitting and Discharge Officer, seeing the inmates going to and coming from court and keeping their records.

At the time of the Benn incident he was in the sergeants' office talking to Mr. Whitely. He heard some sort of confusion.

A. Now I looked out and three correctional officers were there, I do believe

that there was some one of them, I am sure, had Mr. Benn's arm behind his back. . . . And there was some talk, loud talk, and Mr. Benn became aggressive and whatever way it happened, he automatically threw his arms like that and he struck Correctional Officer Torrance and I think it was on the neck or about the shoulder here. . . .

MR. MCRAE. He pulled free?

A. He pulled free and struck Mr. Torrance either on the neck or shoulder, so I said to him, to Mr. Whitely, "Come on," because just immediately after Mr. Torrance retaliated and he struck him a blow to the stomach.

Q. He struck Benn a blow to the stomach?

A. That's correct.

Bell said that the three correctional officers he originally saw were Torrance, Young, and Peake. Bell said that when he came out of the sergeants' office Peake had Benn "standing up against" the office.

A. Miss Eldridge was the only one in all of those people sitting in the dome that came over screaming and she mentioned something to Mr. Torrance which I would say she was accusing Mr. Torrance of punching inmate Benn around the head. Mr. Torrance never done it. He never done it.

Q. What did she say?

A. Oh, she said, stop it, or something to that effect. I was more concerned about getting the inmate away from there, because it was my responsibility to disperse the rest of the inmates and I wanted him out of the area.

Q. So there wouldn't be any general trouble?

A. That's correct . . . She [Miss Eldridge] was as much as accusing Mr. Torrance that he was beating Benn, like it was his fault and so on.

Q. And you disagreed with that?

A. Oh, I definitely disagreed.

Q. Did anybody have Mr. Benn by the hair?

A. No. Not to my knowledge. . . .

Q. So Miss Eldridge did not come right up to the group?

A. She came right up.

Q. She came out of the counselling office?

A. Yes. Out of the counselling booth and right over. I may say there were other inmates in other booths, along with lawyers, that never even as much as lifted their heads. . . .

Q. Did you see any other force applied to the inmate other than restraining holds and the one punch to the stomach?

A. No, that was all that was used.

## EVIDENCE OF JOSEPH PEAKE

C.O. 2 Peake had been employed at the Toronto Jail for three years. He often worked in the difficult area of the court cells.

He stated that on May 1, 1975, he saw Randolph Benn standing at the grille of Corridor 7 "speaking and shouting to some inmates in the corridor". Benn was dressed in kitchen whites.

A. I have worked 7 and 8 for quite some time and I always make a point to keep the kitchen staff away from the bars . . . they have access to knives in the meat shop. . . .

MR. MCRAE. Is that a general practice with other correctional officers too?

A. It used to be, yes. It seems to be slipping away now. I have always maintained that procedure.

Peake said that Torrance told Benn two or three times to move away from the bar "and he finally went over and stood right in front of him and told him to move". Peake then said that as Benn walked away he shouted back. " 'That [deletion] would not let me speak to you.' – He was shouting to some inmate in there, probably his brother . . . he seemed to be quite aggressive about the whole thing."

Peake said Torrance asked him to stand in the rotunda with Benn while he went to get the Chief. "Mr. Torrance came back out and asked him why he called him a [deletion] and he said, all the guards call us [deletion] . . . so Mr. Torrance objected to the fact that he had called him that name and the fact that he said other guards had called them that name. I never heard a guard call an inmate by that name."

He related that Benn took a swing at Torrance and that Torrance then "immediately defended himself by punching him in the stomach". As for the "swing" by Benn, Peake stated, "I believe it landed on his shoulder. I don't know how hard it was but it was an aggressive move."

Peake then stated that "Benn dropped to his knees" and that it was at that time that Young came from the rotunda area and Young and Torrance each grabbed one of Benn's arms and "put them in a lock". He said that Benn then started shouting and it was at that point that he heard another scream or shout from Miss Eldridge. As for Miss Eldridge, Peake stated, "In my estimation that was, at that time, a gross interference with the correctional officer's duty. I wrote a report to the Superintendent about it, reporting her."

In this regard, Miss Eldridge did exceed her authority. As mentioned earlier, her proper course should have been to report the matter to the Superintendent. However, her reaction was probably instinctive, acting on what she thought was an injustice, even though she had not seen what had gone before.

Peake signed as a witness to the Misconduct Report but he was only a witness to the events that took place in the rotunda and not to the subsequent escorting which is also referred to in Torrance's statement in the Misconduct Report. This has been dealt with elsewhere and it has been recommended that if correctional officers intend to attest only to parts of a statement in a Misconduct Report, this should be made clear.

## EVIDENCE OF ROBERT ARNOLD NUTTALL

C.O. 5 Nuttall first saw Benn in segregation. According to the log, at 4.45 p.m. Nuttall interviewed Benn with nurse Cabon and observed that Benn appeared upset and emotional. Benn told him he did not want to speak to him at that time. "He did state that he had called a guard a [deletion]."

This would be confirmatory, if such additional confirmation were required, of Benn having used abusive language towards a correctional officer. This in itself would not, however, justify a punch of some force to the inmate's stomach.

Nuttall described Benn as being upset when he first saw him in segregation. "He appeared to be fretting. He was breathing rather deeply; just appeared in a general extreme emotional condition."

Nuttall acted properly in not attempting to complete his interview with Benn at the time, particularly when Benn said he did not want to speak about the matter. He stated that Benn did not complain to him of any injury or make any allegation about being assaulted by correctional officers.

## EVIDENCE OF JAMES FREDERICK WHITELY

Mr. Whitely impressed the Commission as a person sincerely interested in the correctional field. He was 42 years of age when he gave evidence. He was born in England, had five children, and had served for 16 years with the Royal Air Force. He came to Canada in 1967 to work in the office of the British High Commission in Ottawa.

He began his employment with the Ministry in 1970, starting as a C.O. 1 at the Adult Training Centre in Brampton. He attended one of the community colleges to upgrade his academic qualifications. At the time of giving evidence with reference to the Benn incident (July 10, 1975) he held the rank of Assistant Superintendent of the Toronto Jail with the particular responsibility of security.

Referring to the May 1 incident, Mr. Whitely said that he heard the noise of a scuffle. He came out of the sergeants' office, which he had been using, and saw three correctional officers restraining Benn. Benn was then on his knees. He said Torrance had one arm behind Benn's back and his other hand on Benn's head.

THE COMMISSIONER. Was he holding him by the hair, do you know?

A. Yes.

Peake and Young were also assisting in holding the inmate. Benn was not struggling at the time and was "securely held". He was shouting, "I didn't hit you."



Mr. Whitely said that he went immediately to the scene and asked Torrance what had happened. Torrance replied that "he took a poke at me" and Benn again said that he hadn't struck Torrance.

A. As far as I recall again Officer Peake and Young nodded when Mr. Torrance said that he took a poke at him.

MR. MCREA. By nodding, corroborated what Mr. Torrance said?

A. It seemed, in my opinion, that they corroborated it at that time.

It was Mr. Whitely who instructed that Benn be allowed to stand up and that he then be taken to segregation. From what Mr. Whitely had seen, no excessive force was used against Benn.

The following day, when Mr. Whitely saw Benn, Benn complained that he had been struck in the stomach by Torrance and that he had been kicked in the ribs when put into the segregation cell. Mr. Whitely properly made a report of this matter to Mr. Mulhern, the Deputy Superintendent, and also to the Superintendent.

Mr. Whitely said that he received a letter from Torrance "complaining about Miss Eldridge's conduct". He indicated that Torrance's complaint was that by shouting at him Miss Eldridge had interfered with the carrying out of his duties.

## EVIDENCE OF WILLIAM JOSEPH TAYLOR

Superintendent Taylor stated that he had read the Misconduct Report and Miss Eldridge's report. In addition, he had the report complaining of her interference. He stated it was his practice to read all Misconduct Reports when he came into the jail each morning.

The Misconduct Report indicated that on May 5 Mr. Taylor held a hearing in which Benn admitted using profanity and received a penalty of 10 days' segregation with special diet. Mr. Taylor said he saw Benn the day after the incident but did not hold a hearing at that time because he "wanted to make sure there would not be any outside charges laid".

He said it was because of Miss Eldridge's complaint that the Inspection and Standards Branch of the Ministry was contacted. He did not deal with the allegation of assault against Torrance as this was already being investigated by the Inspection Branch, nor did it appear that he dealt with the allegation of an inmate attacking a correctional officer because this was also connected with the Inspection Branch investigation.

He stated that Benn made no complaint about mistreatment either on the way to segregation or in the segregation cell.

## EVIDENCE OF EDWARD TORRANCE

C.O. 1 Torrance was aged 27, his height was 5'10" and he weighed 190 pounds. He came to Canada from Scotland in 1968 with the equivalent of a Grade XII education. He first joined the Ministry of Correctional Services in December 1971 and worked at Mimico for 26 days and then became ill. He did not return to the Mimico institution after his recovery.

In March 1973 he applied for employment as a correctional officer directly to the Toronto Jail and commenced working there on April 9, 1973. He stated that he did not mention his earlier employment at the Mimico Jail because he did not consider it relevant in view of the short time he had worked at Mimico. He remained at the Toronto Jail from April until October 1973, when he resigned. He was off ill during that period some 12 or 15 days.

He was then engaged in other non-related employment, and in September 1974 he applied for re-employment at the Toronto Jail and started this time on October 3, 1974. He had probationary status as a correctional officer as of the date that he was struck off the payroll on June 6, 1975. He had earlier, on May 23, been given the option of not having to report for work after that date.

He took a three week live-in course at Guelph in January 1975. He also had the correspondence course in 1973. He mentioned that he had received one or two threats from inmates while working as a correctional officer. This, unfortunately, is one of the hazards of the work. Such threats are usually of an empty nature, but they do cause concern to correctional officers.

With reference to the Benn incident, Torrance said he was working the 3:00 to 11:00 shift on May 1, 1975, and had been assigned to Corridors 7 and 8, the court cells.

MR. MCRAE. We've heard evidence that it's a very busy area. Would you agree?

A. Oh, yes, it is.

Q. There's a lot of paper work?

A. Yes, sir.

Q. And you're dealing with a lot of inmates?

A. Yes, sir. . . .

Q. Was there just you and Mr. Young looking after that?

A. I can't remember if that day the Chief had put somebody to help me or not. Sometimes if they have a spare man they'll send him over to the officer in 7 and 8 to help out.

Q. Then you have three?

A. You'd have three until they take him away.

Q. Those are not whole shifts?

A. No. You're lucky to have them for half an hour. I've seen them take away officers you're supposed to have, due to the relief. And a lot of times you're on alone.

Torrance related that he saw Randolph Benn come up the stairs from

the basement and towards the grille at Corridor 7. Benn was dressed in kitchen whites.

A. Well, I asked Benn to move along when he was talking to the inmate in the corridor —

Q. Did he ask permission to talk?

A. No, he didn't. . . . Well, he wasn't actually speaking. He was shouting down the corridor, I believe to his brother. I heard it was his brother later.

Q. Did you know at the time that he was shouting for his brother?

A. No, I didn't know it was his brother he was shouting for until he told me himself later. I asked him to move along. I told him we were busy. He didn't move. He just kept continuing talking to the inmate. I asked him again. He didn't move and I asked him, I think at that time he started to move backwards, but he was still talking to the inmate through the bars. Then the next thing I remember him saying, and he shouted it out pretty loud, "I have to go," he said, "because this [deletion] won't let me talk to him," and he pointed.

Q. He was referring to you?

A. Yes. He pointed right to me, because I was at his side.

Q. What tone of voice did he use when he said that?

A. Very aggressive. A loud voice. . . .

Q. He didn't really call you by that offensive name to your face?

A. No, but he pointed.

Torrance stated that a week or 10 days before the Deputy Superintendent, Mr. Mulhern, had reminded correctional officers to make sure "that inmates don't come up and yap to other inmates through the bars".

He said that one had to be watchful, particularly of kitchen workers: "It's not only knives. I could think of other things like dope." After Benn had used the insulting language towards him, he told him to wait in the rotunda until he got the Chief. He said that Benn went to the rotunda on his own.

A. I was going to get the Chief to have a chat with him about his language and I didn't think it was serious enough to charge him for the simple reason that swearing usually isn't a very uncommon thing in jail and I just wanted to have him, you know, reminded about his language and that he can't get away with calling guards names and this sort of thing. The Chief wasn't there at the time and so I went back. . . . I told him he'd have to wait there for a little while until the Chief came.

Q. Benn was still standing where you had asked him to stand earlier?

A. Yes.

Q. Was anybody else there?

A. Mr. Young, and I believe Mr. Peake was standing near the doorway to the dome.

Torrance said that after he told Benn he would have to wait for a while Benn started to get abusive.

A. I said to him, I says, well, what do you expect when you call a guard a

[deletion], and I believed he mentioned something about, you know, it's okay for you to call us [deletion], which I've never done in my life and wouldn't appreciate doing it to anybody. . . . Just then he was standing with his arms folded and I was standing on this side quite close to Benn and I was more interested in just, if he had appeared in a sorrowful manner, if he said, well look I'm sorry, I'm up tight, I'd say just watch your language and don't let it happen again, just get back to the kitchen, and he was really abusive —

Q. He was standing there with his arms folded as you're indicating?

A. Yes, I believe like that.

Q. Go ahead.

A. The next thing I remember is him pulling his arms like that and he took a swing. I seen it coming and the blow hit me in the shoulder. . . .

Q. So that he swung across and hit you in the right shoulder?

A. I don't believe he really meant for the shoulder, but that's where he connected when I moved back, you know.

Q. You stepped back and he connected with the shoulder?

A. Yes.

Q. What degree of force did he use?

A. If I had stood there it would have been pretty sore, I believe, but I moved back, I think that kind of diverted the blow a little bit. I didn't really feel it too much.

Q. What happened then?

A. Then I punched him in the stomach. It was just a reaction.

According to the above evidence Torrance indicated that he had stepped back when Benn made his move but that Benn had connected with his shoulder anyway. As a result of Torrance's punch to Benn's stomach Torrance said that Benn "kind of keeled over".

A. . . . like he bent over and half kneeled down, I believe, and I remember Mr. Young making a grab for his left arm, and tried to get hold of his back, but his right arm was still, you know, I was trying to grab his right arm at the same time that one was swinging. . . . It took me a lot of time before I got hold of it. That's why I grabbed his hair.

Q. You grabbed his hair with your left hand?

A. Yes, I did. I had to grab it because his complete right side was moving so violently in that direction and I figured that once I got hold of the back of his hair and held him sort of down I'd be more able to get hold of his right arm.

Q. So you grabbed him by the hair with your left arm and held him down somewhat?

A. Yes. Until I got hold his arm was swinging back and forth like that.

Q. Did you get hold of the right arm?

A. Eventually, yes.

The above is confirmation by Torrance that he grabbed Benn by the hair.

Torrance stated that he did not strike Benn again after the initial punch to the stomach. As for Miss Eldridge's reaction, Torrance stated:

A. . . . as far as I'm concerned, the words that she used still ring in my memory, and it was, "Hey, you leave him alone!" and [she] called that three or four times, I would say.

Q. Three or four times?

A. I would think so, yes.

Q. At what point in the struggle did Miss Eldridge ——

A. When I was grabbing for his arm.

Q. After you had his head ——

A. Yes.

Torrance continued:

A. Mr. Whitely was already out by this time and I explained to him what actually took place in the beginning and well he could see the struggling at the time, I believe, but I told him what took place at the start and he ordered us to take Benn to segregation.

Q. And you had hold of Mr. Benn's right arm and you described Mr. Young holding his left? Was there still some struggling by then?

A. Yes.

Q. What was he doing exactly?

A. I remember he was pretty good up until, Benn didn't pick up his glasses. He had [dropped] his glasses when he keeled over and I had to let go of some of the pressure to pick up his glasses and I put them in his pocket and that's when he must have realized that I had let go with some of the pressure off his arm and that's when he tried to get away. . . .

Q. Was he doing anything else other than trying to pull away from you?

A. Yes, he was using, I would say, any part of his body that was movable at the time. You know, like he was using the whole top of his body and I am still positive he was using his feet, like a kick in the back or the side.

Q. Did you get kicked?

A. I don't think I did. I didn't feel any pain, so I don't think I did.

Q. You and Mr. Young took him to the stairs. Did you take him to segregation?

A. Yes. I believe Mr. Minarik was there too.

Q. Did he put him under physical control as well?

A. No, I had ahold — as far as I can remember I had ahold of one arm and Mr. Young had ahold of the other arm, and I think that was a secure enough grip. . . .

Q. And did Benn continue to struggle as you went down the stairs?

A. Yes, he did.

Q. Until you got down to the bottom of the stairs?

A. He was struggling all the way.

Q. What about this allegation that a towel was put over his face?

A. I don't know where he got that idea at all, sir, but it never happened at all. It never happened.



Torrance said that no other force was used on Benn than that of armlocks and that he was not punched or kicked on the way to segregation.

A. A couple of times he tried to get away from the grip I had on him.

Q. Was he using his feet?

A. He was using his feet all the time because they were free. [In the segregation area] he got undressed and I handed him a pair of baby dolls, the issue you wear in segregation. He didn't put them on right away, but he walked in —

Q. He walked in?

A. Well, he was held as he went in, but I handed them to him and he wasn't struggling as much then. He was practically walking by himself.

Q. What happened when he got inside?

A. Nothing happened then. It was a case of just closing the door.

Torrance stated that it was not necessary to use any force on Benn while he was in the segregation cell and he denied Benn's claim that he was kicked and punched while in the tunnel, while in the elevator, and in the segregation cell.

## BENN SUMMARY

There was ample evidence to justify Torrance's punch to Benn's stomach. By his own admission, Benn indicated that his attitude was a belligerent one at the time and that he made some motion that Torrance could have interpreted as a threat. As has been said of military tactics and even of sport, the best defence is often offence. This being the case, it is immaterial whether a blow actually landed on Torrance. There was evidence that Torrance also slapped Benn about the head while they were in the rotunda. If this was after Benn was wholly under control, it was not justified. If Benn was struggling at the time, some excuse could be advanced on behalf of Torrance. At any rate, this slapping was secondary to the stomach blow and might almost be considered part of the same sequence.

Although there was some evidence to the effect that it was the restraint hold that caused Benn to go to his knees, rather than the blow, my finding is that Benn went to his knees as a result of the blow to the stomach. In view, however, of the evidence of various witnesses, including Benn himself, it appears that Torrance had some justification in thinking he was being, or was going to be, attacked by Benn. Torrance is, therefore, entitled to the benefit of any doubt about his action being a defensive one.

There was an allegation that unnecessary force was used while Benn was being escorted from the rotunda to segregation. Benn would, after leaving the rotunda, be less likely to be seen by the public and perhaps even by inmates. Thus, if reprisals were intended, they might have been carried out in the basement corridor, the elevator, or the segregation area. There was

also evidence that Benn was struggling *en route* to segregation. In the absence of any independent or more conclusive evidence, I make no finding on this allegation.

The inexcusable action was the kicking of Benn while he lay in the segregation cell. Weighing evidence or deciding upon credibility is not just a matter of counting heads. Despite the denials of Minarik, Young, and Torrance, I accept the evidence of Benn, which had the ring of truth about it, that he was kicked as he lay in the segregation cell. Benn was unable to say which of the three aforementioned correctional officers who escorted him to segregation administered the actual kick. Since there was “no breach in the ranks” on the part of the three officers, any one of them could have done the kicking. In the absence of any subsequent statement, from one or more of them, I make no finding as to which of the three kicked Benn, save to say that from a motivation point of view Torrance was the most likely.

## The Pearce Allegation

*"When you go by they almost count you. . . . Touch you on the shoulder like this as you were going through, like you count cattle or something and touch you on the shoulder and when you go out they count." (Howard Dean)*

*"I know the kid pretty well. He is a hate merchant. . . . Yes, he hates everybody. I don't know if it is the pressure of his charges. I don't want to discuss that. It is his business. I think the kid has a lot of pressure. He thinks everybody is against him." (Howard Dean, referring to Daniel Pearce)*

*"I've talked to him anyway, and he thinks all the time somebody is going to get him. You know, he's always looking over his shoulder . . . he came back from court, he just came out of 7 corridor and you're up tight when you're down there, you get about 80 guys down in that corridor, they're laying on the floor, urinating against the walls, it's just sickening you know . . . the only thing is the pressure's built up, I don't think you can help yourself, unless you've got damn good control." (Howard Dean)*

*"I grabbed him by the shirt and pulled him off and as I pulled him off he landed a sucker on me." (C.O. 2 James Loran, commenting on actions of Pearce)*

### EVIDENCE OF DANIEL ROOSEVELT PEARCE

Pearce was the second inmate involved in allegations against Torrance. At the time of the hearing, he was 21 years of age, having been born in Montego

Bay, Jamaica, in 1954. He was 5'6" in height and weighed 135 pounds. Pearce stated that he came to Canada in July 1973. He was arrested on March 27, 1975, and charged with two others for the murder of a taxicab driver. The trial was widely publicized. Pearce was acquitted.

At the time of the incident alleged against Torrance, Pearce was an inmate of the Toronto Jail awaiting trial. He had no previous criminal convictions in Canada, but admitted a previous record in Jamaica involving possession of firearms and larceny. He had been in the Toronto Jail since his arrest.

Pearce stated that he returned from a court appearance about noon on May 2 and was placed in the court cells (he was unable to recall whether it was Corridor 7 or Corridor 8). After he had been there for an hour and a half or two hours, a correctional officer came into the corridor to take inmates to the new part of the jail.

Pearce was called first and told to stand by the mesh opposite the stairs leading to the basement tunnel. He stated that he did this, and then a friend of his – one Lincoln Manderson – came up the stairs with another inmate and a correctional officer. Pearce and Manderson were apparently surprised to see each other and began talking. "When he tried to shake my hand, the guard said move along. . . . We just smiled at each other and at the same time the guard said move along. . . . And all of a sudden I heard a push behind my back and someone said move along."

Pearce described the pushing as "just a shove" to his shoulder. He said that he told the correctional officer, whom he identified as Torrance, "You don't have to push." He related that Torrance then said that he (Torrance) "could do anything he wanted to do with me".

"I kept on moving around and he kept pushing me down the stairs." He said he was pushed three or four times. In answer to a question as to the degree of force that was used, he replied that it "was just a shove" but added that there was sufficient force that "he wants me to fall on my face". Pearce said, "The last time he pushed me I flicked his hand off my shoulder." At that time he was on the stairway four steps from the top. In "bouncing" Torrance's arm off, Pearce said, he came in contact with Torrance's hand.

A. I just flicked it off my shoulder.

MR. MCRAE. What happened then?

A. Then he got mad and held me inside here.

Pearce indicated that Torrance grabbed the inside of his shirt collar and started to pull him back upstairs.

Q. What happened then?

A. Then he tripped and fell.

Q. Mr. Torrance fell?

A. Yes, and he pulled me down on him, so I was on top of him.

Q. Where would this be on the stairs with respect to the top of the stairs?

A. Third.

Q. Third step?

A. Yes.

Q. And about the third step from the top Mr. Torrance fell and you fell back

over him because you were being held?

A. Right.

Q. What happened then?

A. I punched him.

Q. Punched him? Where did you punch him?

A. Chest.

Q. How many times?

A. One time.

Q. What did he do?

A. Well, I was lifted off immediately.

Q. You were lifted off immediately. So he did not punch you?

A. No.

Q. Other than grab you by the collar as you have described, did he do anything else to you, besides pushing you?

A. After I was upstairs, he started to kick me.

Q. . . . until the point that you punched him, did he do anything to you other than push you as you have described, and grabbed you by the collar?

A. No, he did not get any chance because I was lifted up by other guards.

Pearce identified one of the other correctional officers as C.O. 2 James Loran. He was not able at first to identify the other correctional officer, but later indicated that it was C.O. 2 Thomas McDonald. Pearce indicated that McDonald helped Loran pull Pearce off Torrance and later assisted in escorting Pearce to segregation, holding one of his arms behind his back while Torrance held the other.

As for the punch to Torrance's chest, he said it was with his right fist and there could not have been much force in it because he was "pretty close" at the time.

Pearce indicated that back on the first floor landing he was held "spread-eagled", that Torrance and Loran held him, and that seven or eight additional correctional officers arrived at the scene.

A. They were kicking me and punching me.

Q. Where were you kicked and punched?

A. All over.

Q. You are indicating your right shin; you say your foot?

A. Yes.

Q. Your right foot?

A. Yes, they punched me in my right front. . . . I was kicked all over my foot, my leg. . . . I was punched in my neck. . . .

Q. Anywhere else?

A. Ribs.

Q. You are indicating the right side, is that what you mean, the ribs on the right side?

A. Yes.

Q. Punched there?

A. Yes.

Pearce indicated that the correctional officers were shouting about "the



cabby" (who had been murdered). (Pearce added that when he was in segregation he felt pain in his penis and alleged that this was a result of the kicks he had received.) Pearce stated that "after a while a white shirt came along" and told them to take Pearce to segregation. He identified the "white shirt" as C.O. 5 Robert Nuttall. He said that another "white shirt", C.O. 3 Thomas Bell, was present in the area but that he had nothing to do with the incident. He alleged that it was Torrance who kicked him on the leg and hit him in the chest and the back of the neck.

A. He kicked and punched me in my ribs.

Q. He kicked and punched you in your ribs?

A. And my neck.

Q. The back of your neck?

A. Yes.

Pearce said that Loran also kicked him, "maybe more than once", but he was unable to identify any of the other correctional officers who might have used force because he was covering up his face. He alleged that after Nuttall ordered him to segregation Torrance and another correctional officer (whom he identified after a recess as McDonald) put his arms behind his back. He alleged that his arm was twisted by Torrance. This was probably in the nature of a come-along hold, since he did not complain that there was excessive use of force.

At the foot of the stairway two other correctional officers, coming from the shower area, met them. Pearce was unable to identify them. He said that they grabbed him by the legs and that Nuttall told these two new officers to put him down on his feet and let him walk.

He alleged that when they came into the elevator Torrance started hitting him again after the doors were closed and that Nuttall and the other escorting correctional officer were present. He said that he was struck by Torrance in the back of the neck on this occasion "about two more times".

He did not allege any further incident until he was in the exercise area of the segregation cells. Nuttall, Torrance, and the other correctional officer were present. He alleged that Torrance here began hitting him and kicking him in the penis and did this "about three more times". He also alleged that Torrance and the other correctional officer were holding him from behind at this time and that Torrance was kicking around his leg. When questioned how Torrance was able to kick him while holding him from the rear, Pearce said that Torrance kicked around his right leg.

Q. Were you doing anything in the way of struggling or kicking or cursing or anything like that?

A. I wasn't cursing, I was scared. . . .

Q. Did you kick back at Mr. Torrance or any of the other guards?

A. No.

Finally, Pearce alleged that as he was going into the segregation cell Torrance banged his head in the door and that his temple struck the door "pretty hard", and that subsequently a mark and swelling were visible and

"really large". Pearce alleged that the banging of his head was not accidental but deliberate.

At one time in his evidence, Pearce stated that Torrance was the only correctional officer who struck him while he was in the segregation area. Later, he stated that he was kicked and punched by McDonald as well as Torrance and that Nuttall was able to see this. The change of evidence in connection with this casts some doubt on Pearce's credibility, although, as in the acceptance of the evidence of any witness, one may accept all, none, or part of a witness's testimony.

Pearce stated that when he was in the segregation cell he was told to take his clothes off. This is contrary to the usual procedure where an inmate is ordered to undress in the exercise area outside the cell. On the balance of probabilities, this might also cast doubt on Pearce's evidence. Pearce alleged that both Torrance and Nuttall were in the cell with him and that when he started to take his clothes off Torrance began "kicking me again and punching me".

A. He started punching me and kicking me again and saying if I understand him, he can do anything he wants to do.

Q. He could do anything he wanted to do, he said that more than once?

A. Yes, a lot of times.

Q. He was punching you and kicking you?

A. Yes, while I was sitting down.

Q. What did you do?

A. Nothing, just sitting there.

Q. Did you struggle or fight back?

A. No, because I was dizzy from the blow I had got.

Q. From the blow to your head. What was Mr. Nuttall doing while this was happening?

A. Sometimes he would say take it easy. . . .

Q. To whom?

A. Mr. Torrance.

Q. Did Mr. Nuttall hit you at all?

A. No.

Q. Did he stop Mr. Torrance?

A. He said to take it easy, quit a little bit.

Q. Did Mr. Torrance then quit?

A. Yes, he quit.

Q. And where did Mr. Torrance kick you and punch you while you were sitting down?

A. He kicked me on my right leg.

Q. Your right leg?

A. Yes.

Q. Anywhere else?

A. He punched me on the back.

Pearce said that he was left without clothes and about 10 minutes later

received the segregation garment from Nuttall who had come back "with a doctor". In fact, it was nurse Cabon.

A. Mr. Nuttall told me to stand up and turn around. And the guy was standing at the cell door. I turned around and he kept on saying to the guy, he is okay, he is all right.

THE COMMISSIONER. Who kept saying that?

A. Mr. Nuttall.

Q. He said it to the nurse, that you were all right?

A. Yes.

A log entry by Cabon at 4:00 p.m. read: "Daniel Pearce put in segregation appeared disturbed, no bruises, apparently charged with murder at court today. Duty doctor will be contacted re medicine to bring him down." The next entry, for the same time, signed by Nuttall, read: "Admitted Daniel Pearce to 2 Cell at 1550 hours on charge. 23-1H. Was violent at time of admission; now quiet; C.O.s Torrance and T. McDonald."

Pearce alleged that he complained to Cabon about his head on a later occasion, but of Cabon's first visit he said,

A. I got no chance to complain to him because the white shirt just kept telling him I was okay.

Q. Mr. Nuttall kept telling Mr. Cabon that you were okay?

A. Yes.

Q. Mr. Cabon looked at you and apparently made a note that there was no bruises?

A. He did not come close to see. He did not examine me.

Q. And you did not tell him at that time about any other injury – headache or anything?

A. No.

A log entry, approximately six and a half hours later, indicated a complaint of headaches.

It was also Pearce's evidence that between Cabon's two visits Torrance returned to his cell with C.O. 1 Paul Michael Barclay.

A. As soon as the door opened there was Torrance and this other guard. He said, "Here is the bitch", and he punched at me.

Q. Mr. Torrance punched at you?

A. Yes. . . .

Q. Did he hit you on the right side of your face?

A. Yes.

Q. Right below the eye?

A. Yes.

Q. How many times?

A. Once, and I tried to run out and the other guard pushed my face in and I yelled and they closed the door on me.

Q. You tried to run out into the exercise area?

A. Yes.

Q. Out of the cell?

A. Yes.

Q. And the other guard being Mr. Barclay?

A. Yes.

Q. He just pushed you in the face?

A. Pushed me in the face.

Q. And they closed the door and ran?

A. I yelled and they closed the door and ran.

Q. You yelled, what did you yell?

A. Help, help.

Pearce said that the regular officer in charge of the segregation cells at that time was on a break.

Pearce said that the following morning he was visited by the Deputy Superintendent, J. Walter, and he told him of Torrance's and Barclay's returning to his cell. Mr. Walter said that he would have the Superintendent investigate the matter.

Pearce related that on the evening of the second day Barclay and C.O. 1 Lloyd Curtis visited him in his cell. They did not touch him but Barclay made some reference to his being black and when Pearce stated that he worked at the Canadian Pacific Railway he was asked if he killed people there too.

Undoubtedly there was strong feeling against Pearce and the others charged with the murder of a taxicab driver, as the crime had been reported extensively in the media. Professionalism on the part of correctional officers should have dictated that they not allow personal feelings to come into play and that they not harass an inmate. I am not making any finding as to whether or not this conversation did take place; from other evidence at the hearing it is not beyond the bounds of possibility that some correctional officers, learning of a serious and foul crime, might harass the inmate charged. As it turned out, Pearce was acquitted by a jury.

Even if an inmate is tried and found guilty of a serious offence, the correctional officers must be trained, and train themselves, to treat all inmates, no matter what their charges, in the same way. Their duty should be custodial and neither physically nor mentally punitive. The exception, of course, is breach of the jail rules, in which case the inmate might be punished by segregation. But even while in segregation he should not be subjected to physical abuse or verbal harassment.

The following Monday morning, Pearce said, he was seen by Mr. Taylor. "He didn't ask me nothing, just told me I was charged with a disturbance and that he was going to investigate." The next day Mr. Taylor returned and there was a hearing on the misconduct charge.

A. When he came he told me I was charged with assault. He started to read out a paper to me.

Q. He read the charge to you, did he?

A. Yes.

Q. What did he do?

A. He said . . . that Mr. Torrance told me to tuck my shirt in my pants and I didn't and I turned around and punched him. There was some more, but I don't remember what he said.

According to Torrance's statement in the Misconduct Report, Pearce twice ignored Torrance's order to "tuck his shirt in and suddenly threw a punch at me and I struggled with him to the steps of the stairway. Mr. Loran, who was coming up the stairs, came to my assistance. Then he punched Mr. Loran on the face and chest. With the help of another officer, Mr. T. McDonald, we managed to restrain him. Mr. Nuttall then told us to take the inmate to 1B segregation. Inmate Pearce was still kicking and punching when he went into segregation."

As can be seen from Torrance's statement in the Misconduct Report, there is a discrepancy as to the events leading up to the struggle. Pearce, in his evidence before the Commission, challenged Torrance's statement.

A. He is telling a lie, because my shirt was in the pants already. You can't walk around in prison with your shirt over your pants. That is a rule. My shirt was in my pants already.

Q. I agree with you it is a rule of the institution. That would be one reason he would tell you to tuck it in if it wasn't tucked in.

A. He didn't say that to me.

Pearce was charged under the regulations with "attacking or threatening to attack another person within the institution". He stated that he did not strike Torrance except in the struggle on the stairs and he also denied the allegation that he punched Torrance. The report of Nuttall on the Misconduct Report read as follows:

I arrived on the scene of the misconduct report and found Inmate Pearce on the stairs fighting with two officers, CO's Torrance and Loran. I observed him strike CO Mr. Loran. He was restrained with difficulty and removed to the bottom of the stairs with the assistance of CO McDonald. Inmate Daniel Pearce was extremely violent and was taken to 1B placed in number 2 cell with the minimum amount of force possible used.

Pearce also questioned Nuttall's statement, claiming that Nuttall, too, was a "liar".

Although Mr. Taylor in his summary on the Misconduct Report indicated that Pearce denied striking any officer, Pearce said that the Superintendent did not ask him about this. Pearce must have been in error, for how else could Mr. Taylor have written on the report that Pearce denied striking any officer. In any event, Pearce was sentenced to 10 days in segregation with restricted diet. Pearce said that there were visible bruises to his face and that he had shown them to his lawyer's investigator and two other visitors. He also alleged that he made several complaints to the medical staff at



the jail.

According to the medical summary, Pearce was examined by Dr. M. L. Goodwin on May 14. There was the following notation:

- (1) Pain in balls from injuries received on 9.5.75.
- (2) Pain in left back since 9.5.75.
- (3) Pain in upper nostrils.
- (4) Pain in right forehead.
- Px [physical examination] no scrotal abnormality.
- (2) No back abnormality full back flexion.
- (3) Nothing to see.
- (4) Nothing seen or felt.

The incidents in which Pearce alleges that he received injury at the hands of the correctional officers occurred on May 2 and May 3. The examination was on May 14. The doctor's report refers to a complaint of injuries received on May 9.

A memorandum dated May 16 from Mr. Jones of the Inspection and Standards Branch of the Ministry of Correctional Services to his superior, S. Teggart, was filed as an exhibit. In this memorandum, reference was made to Mr. Taylor's receiving a copy of a letter dated May 6 from Clayton Ruby, solicitor for Pearce, addressed to Donald Sinclair, the former Deputy Minister. The memorandum stated in part that Mr. Ruby "alleges assault and harassment by staff of the Toronto Jail in regard to his client". I mention the date as it specifically pre-dates Dr. Goodwin's note of the date injuries were received, namely May 9, 1975. It may be that there was an error in the date given by Pearce to Dr. Goodwin or an error in understanding or entering the date. In any event, according to Dr. Goodwin's note, by May 14 there was no objective sign of injury. In his medical note of May 14 Dr. Goodwin indicated that nothing was prescribed by way of drugs or remedy for Pearce. At the time of giving his evidence, July 7, 1975, Pearce alleged that he was still suffering from his injuries.

## EVIDENCE OF FRANK COLIN FAROUSE

This inmate was in the Toronto Jail at the time of the Pearce incident. He, too, had returned from court on May 2 and was placed in Corridor 7. He was called out of the corridor with Pearce to be transferred to the new section of the jail. He stated that he was following behind Pearce when Pearce stopped to talk to another inmate. Torrance then told Pearce to "move along" and gave Pearce "a little shove".

- A. I remember he pushed Pearce, and Pearce said: "Don't push me." I guess he got mad and said, "I'll push you if I want to."

MR. MCRAE. Who said: "I'll push you if I want to"?

A. The guard did. And Pearce swung around and the guard grabbed him by the collar and pulled him.

Q. Pearce swung around?

A. He just turned around.

Q. What did he do when he turned around?

A. He just turned around, you know, to say something. And the guard pulled him.

Q. When Pearce turned around did he hit the guard or push his arm off or anything like that?

A. I didn't notice that.

Farouse said that as a result of Torrance pulling Pearce by the collar both Torrance and Pearce fell down. He further stated that he saw Torrance punch Pearce but that he did not see Pearce kick or punch, although he said "maybe" Pearce could have done so before they fell. Once they had fallen, he said, he did not know whether Pearce had punched Torrance. Additional correctional officers arrived and Pearce was taken to the top of the landing and he saw Torrance punch Pearce once they were at the top of the landing. He stated that Pearce was screaming and trying to get loose. He indicated that when Torrance hit Pearce, Pearce's arms were being held behind his back. Farouse did not see any other correctional officers strike Pearce. That was the extent of his knowledge of the matter as Pearce was then taken down the basement stairs.

## EVIDENCE OF LINCOLN GEORGE MANDERSON

Manderson had been in the Toronto Jail since January 1975. He had been a schoolmate of Pearce's in Jamaica and they had worked together at the C.P.R. Manderson knew that Pearce was in the Toronto Jail but he did not see him until the day of the incident, May 2.

He was coming up the stairs from the basement area and Pearce was at the top of the landing. He stopped to shake Pearce's hand. The correctional officer with Pearce told him (Manderson) to keep moving. He could see the correctional officer holding Pearce by the shirt and pushing him down the stairs. According to Manderson, Pearce went to the foot of the stairs as a result of the push and the correctional officer did not fall. Manderson's evidence with respect to both these matters is in error. It may well be that he was unable to see all the events and that some of his evidence was based on assumption.

Manderson stated that after he was locked in his cell in Corridor 7 he heard Pearce calling out. He also heard sounds "like there was a fight". Manderson's evidence is helpful only in corroborating the meeting with Pearce as they were moving in opposite directions and Torrance's pushing

of Pearce on the stairway.

Unless correctional officers are required to restrain inmates, it is suggested that they should not touch inmates, particularly those who might be "up tight". There are some people who resent being touched, particularly from the rear. This feeling is stronger when they are in custody. Articles have been written about this matter of inmates requiring some small open space about them and their "touchiness" when others come in close contact with them.

Undoubtedly Pearce, a 21-year-old, was under considerable strain because of being charged with murder, and his threshold to any affront or imagined affront would be low.

Other evidence before the Commission indicated that inmates have been pushed by correctional staff to move them along and that this has occurred even on stairways. Undoubtedly correctional officers may be overburdened at certain times and hard-pressed to accomplish their work. Add to this an inmate who appears purposely to move more slowly than the correctional officer thinks he should, and you have a situation where the patience of the correctional officer may be sorely tried.

The correctional staff should be trained to make the necessary allowances and to be prepared at times to slacken the pace, appreciating the problems of the inmate and making allowances for his need to move independently at his own pace. If, however, the delay is so deliberate as to constitute disobeying an order, and the matter is important enough, the inmate should be put on charge rather than physically pushed. This would prevent incidents such as the Pearce-Torrance episode.

## EVIDENCE OF ERNEST WILLIAM FOSTER

This inmate was in segregation at his own request, having been assaulted by other inmates. He was awaiting trial on a charge of indecent assault. He saw Pearce brought into the segregation area.

MR. MCRAE. What was he doing?

A. Struggling like he didn't want to be put into the cell.

Q. When you say he was struggling, would you describe what he was doing? Was he kicking or moving his shoulders? That is what I mean.

A. He was moving his shoulders and kicking.

Q. Saying anything?

A. Not that I know of, no.

Q. Go ahead. Keep on telling us what you saw happen.

A. I see him get kicked twice.

Foster was unable to identify the correctional officer who kicked Pearce, or the other line officer with him. He did, however, identify the "white shirt" as C.O. 4 Robert Nuttall. He said that Pearce was kicked twice in the stomach

and there was also a punch to the stomach. He believed that these were administered by more than one of the correctional officers. He saw Pearce being pushed into the cell but did not know whether anything happened to him while in the cell.

Q. Was it necessary for him to be pushed in or would he have gone in without being pushed in?

A. I think he had to be pushed in.

Q. He was reluctant to go in, was he?

A. Yes.

## EVIDENCE OF ARTHUR JAMES MONCKTON

Monckton was an inmate in the Toronto Jail who also gave evidence with reference to the Benn incident involving Torrance. Monckton probably put the Pearce incident in its proper perspective. He first remembered seeing Pearce on the stairway.

A. Well, Pearce was going down the stairs. He was walking pretty slow. . . . And things were quite busy that day too, as they are when people are coming back from the courts. Mr. Torrance was going down the stairs and he wanted Pearce to move along a bit faster apparently.

MR. MCRAE. What attracted your attention to these two people? Was there any shouting or anything?

A. No, not really shouting. Mr. Torrance raised his voice and told Pearce to move along or hurry up or something like that. And he gave Pearce a shove on his shoulder.

Q. Right. Were they on the stairs at this point?

A. They were on the stairs. . . . So right after that Pearce had turned around and just sort of went at Mr. Torrance. . . . After Mr. Torrance pushed him. . . . Pearce turned around. I am not sure if he was swinging, I think he did take a swing. Mr. Torrance went to step backwards and fell on the steps and he had pulled Pearce down on top of him. So they rolled around a bit on the stairs.

Q. Mr. Torrance was lying on his back then?

A. Yes, with Pearce on top of him. . . . Halfway down the stairs. . . . Pearce and Mr. Torrance were struggling a bit on the stairs, and then Mr. Torrance managed to get on top and get Pearce to his feet and take him up to the top of the stairs where a couple other guards were up there by that time.

Monckton did not recall whether Torrance had earlier taken hold of Pearce's collar, nor did he remember any conversation between Torrance and Pearce about Pearce's shirt. At the top of the stairs Pearce was "struggling around". Other correctional officers were there and "they had sort of grabbed Pearce. . . . They had hold of his arms and he was trying to get free."



When asked whether he saw Pearce kick out at anyone at that time he replied, "I cannot say I did and I cannot say that I did not."

## EVIDENCE OF HOWARD DANIEL DEAN

At the time of giving evidence this inmate, who was 40, was in the Toronto Jail on a detention order with reference to charges of murder and conspiracy to murder. He had entered the Toronto Jail in March and had been there continuously up to May 2. He had a criminal record going back 21 years. He had been to court in the morning and after returning was placed in Corridor 7, which he called "the snake pit". Dean said he knew Pearce from talking to him, as they went to court at the same time almost every week. They were both lodged in the new building but in different corridors.

It was Dean's impression that Torrance was the one who had called out the names of inmates from Corridor 7 for dispersal to their regular cells. He said, "There was a couple of us standing there waiting, hoping they would call your name so you can get the hell out of there, too."

On the matter of whether Torrance had instructed Pearce to tuck his shirt in, Dean said,

A. I think the officer told him something about his shirt and to get moving because he was stopped and talking to another guy momentarily for a minute and he touched him on the shoulder, the normal procedure. . . .

MR. MCREA. Did you hear Mr. Torrance tell the inmate, Pearce, "Put your shirt in"?

A. I don't know if he was talking to him directly or to all of us.

Dean stated that Torrance touched Pearce on the shoulder. "When you go by they almost count you. . . . Touch you on the shoulder like this, as you were going through, like you count cattle or something and touch you on the shoulder and when you go out they count."

Q. You heard Mr. Torrance speak to Pearce about his shirt, thought he was speaking to Pearce. Saw Mr. Torrance touch Pearce on the shoulder?

A. Yes, he touched everybody.

Q. Did he say anything when he touched him?

A. "Just keep moving."

Q. Did Mr. Pearce make any response to that?

A. Well, I think more or less if looks could kill he would be dead. If I may express my opinion, I know the kid pretty well. He is a hate merchant. . . .

Yes, he hates everybody. I don't know if it is the pressure of his charges.

I don't want to discuss that. It is his business. I think the kid has a lot of pressure. He thinks everybody is against him. He was told to turn around and he shrugged off and I think Mr. Torrance touched him again . . . and said, "Come on, get moving" or something similar to this. . . . All of a sudden I



turned around again and they were scuffling and I saw Pearce throw a punch at Mr. Torrance.

Q. Where were they scuffling?

A. Just started to go past the dome again.

Q. Are you sure they were scuffling in this landing here?

A. They were scuffling and he had him by the shirt or something like that and they started to go down the stairs or something – I don't know what happened there – there was such a confusion. Everybody was trying to get in front of me to see what was going on and a couple of guys were going to help this Pearce out, a couple of coloured chaps. When I looked over again I saw Pearce on top of Torrance on the top of the stairway and punching him and all of the other guards come in and pull him off and the last thing he was standing up and the guards had his arms and legs and everything and he was spread-eagled and after that I lost complete sight of it, because they were swarming all over and I couldn't see what was going on and I got back inside. . . . I don't know how many officers there were, but they had pulled him off Mr. Torrance and lifted him up by the arms and the legs and everything else and he was spread-eagled standing straight up like this. That is when it was broken up and Mr. Torrance put some hold on him and they started going down the stairs and I lost complete sight of it.

Dean was then taken over his evidence in a more detailed manner.

Q. I think you said that Mr. Pearce looked at Torrance: "If looks could kill he would kill him", and he resented that?

A. Yes, I think he resented being touched, told what to do.

Q. Did he say anything?

A. Not at that time that I heard.

Q. Then what did you see?

A. Something, there was another push or something ———

Q. Now you can testify that. Did you see another push?

A. I saw Torrance touch him again. Yes.

Q. All right. Mr. Torrance, you say, took another push, was it a push or touch?

A. Just a touch like, "Come on, get moving," you know.

Q. So Mr. Torrance touched him again?

A. Yes.

Q. Where did that second touching take place?

A. He was starting to walk along, maybe a couple of feet, Torrance was standing pretty close, then I think he could see something was going to happen ———

Q. Mr. Torrance was close to Pearce at that time and this was further on ———

A. They were starting to move, it wasn't too far away. . . .

Q. What happened this time?

A. I think Pearce knocked his hand off his shoulder —

Q. Did you see that?

A. Yes, I think Mr. Torrance grabbed him again by the shirt, like that ———

Q. ——— Mr. Torrance took hold of his shirt?

A. ——— that's when I saw Mr. Pearce hit the officer ———

Q. And where did this take place?

A. They were starting to move right along down towards the stairs, the scuffle, the pushing, whatever ———

Q. Where was Mr. Pearce when Mr. Torrance grabbed him by the shirt? . . . Can you show me in the diagram?

A. They were a little past the dome then. . . .

Q. That would put them at the entrance to the dome at the top of the stairs?

A. By the time all that's going on they were pretty well, the stairs going down there, then everything started jumping around in front of me and you couldn't exactly see what was going on, that's the last time I got a glimpse of it. Mr. Torrance was on his back on the two top stairs and Pearce was on top punching him. . . .

Q. How many times did you see Mr. Pearce punch Mr. Torrance?

A. At least 2 or 3 times when he had him down like that. . . . [There was] no blow to my knowledge thrown by anyone of the staff. They had the kid spread-eagled like that, and I heard Torrance say, "Let him go, I can take care of him." He put some kind of hold on him and walked him down the stairs and after he put that on I don't know what happened. They were out of my view. I went back inside the corridor.

It was Dean's opinion that Pearce's meeting with Manderson and their attempt to talk to each other triggered the incident.

A. . . . because that's when Mr. Torrance told him to get moving, you know . . . because they got about 10, 15 guys in there from the kitchen. It causes a slow-down, from getting out there, and getting the staff all upset, because they don't know if they belong in those corridors or belong somewhere else. It's like a badly organized dog fight, as far as I'm concerned. The whole thing, down ———

Q. I take it from what you say you feel that Mr. Pearce reacted too strongly to what happened?

A. I'm on the same kind of charges Mr. Pearce is and I'm pretty well up tight, but I'm older than he is and I can handle it, the situation, better than he can probably, being a kid, and being coloured I think maybe he's got the impression that the place is prejudiced against him. The guards are after him or against him, I think this was in his mind. I've talked to him anyway, and he thinks all the time somebody is going to get him. You know, he's always looking over his shoulder. I think it was more of just a reaction, I think he's sorry for it, after I talked to him, and he said he wished it never happened, but he just, it's just one of those things, he came back from court, he just came out of 7 corridor and you're up tight when you're down there, you get about 80 guys down in that corridor, they're laying on the floor, urinating against the walls, it's just sickening, you know. So if anybody gets punched down there, there is fights down there every day, three or four guys get punched out. Whether the staff got hit, I don't know, the only thing is the pressure's built up. I don't think you can help yourself, unless you've got damn good control.

The punching and fighting that Dean was referring to in Corridor 7 was between inmate and inmate.

## EVIDENCE OF PAUL MICHAEL BARCLAY

This correctional officer had the equivalent of Grade XII education and had been employed as a C.O. 1 at the Toronto Jail since January 6, 1975. Among his previous occupations was that of taxi-driver. This is mentioned because of the murder charge against Pearce which was the result of the death of a taxi-driver. With reference to Barclay's training, he stated that after being at the Toronto Jail for about six weeks he took a two-week orientation course. He was scheduled for the course at Guelph in September 1975. In addition to his two-week orientation course he said he was trained on the site by experienced senior officers.

Barclay denied any attack on Pearce and said that he first heard of the alleged incident when "Eddy Torrance showed me his letter, that he was fired". He said he believed Torrance had told him that Pearce "was reluctant to go downstairs so he sort of had to force him to go downstairs. He refused an order." He said that nothing was said by Torrance about Pearce having his shirt hanging out.

Barclay, in his evidence, specifically denied that in company with Torrance he visited Pearce in segregation.

## EVIDENCE OF THOMAS BELL

This correctional officer, who was a C.O. 3, first saw Pearce on the floor on the landing outside Corridors 7 and 8 about four or five feet from the stairway. He said that Young, McDonald, and Torrance were trying to restrain Pearce. Pearce was "kicking and flailing" and "in my opinion anyone that would have got in his way certainly would have got a punch or kick. I did observe the officers, they certainly had to restrain this man, but there was no unnecessary force used."

He said that one of the officers was kicked but he was unable to identify which officer.

## EVIDENCE OF THOMAS McDONALD

This C.O. 2 was working with Torrance at the time of the incident. It was his evidence that Torrance was escorting two inmates (Pearce and Farouse) and was descending the stairway when he (McDonald) shouted "hold it" and requested Torrance to escort a third inmate. Torrance repeated the order to Pearce to "hold it", then "all of a sudden a commotion started". McDonald said, "I seen Mr. Torrance land on his back on the stairs and inmate Pearce struggling with him, punching him."

MR. MCRAE. How many times did you see Mr. Pearce punch Mr. Torrance?

A. A few times.

Q. Two or three times?

A. Two times. . . . I had two other ones to go to another location and didn't want to leave them, because I seen Mr. Loran coming up and he struggled up a bit and to the best of my knowledge I can't remember Mr. Young being there at all, that's being quite honest with you, I can't remember him there at all. I do remember going down to the bottom of the stairs.

Q. Did the struggle take place on the stairs or did any of it take place on the landing at the top of the stairs?

A. Yes. They brought him up the stairs.

Q. Brought Pearce up the stairs?

A. Yes, there was a bit of a struggle at the top of the stairs . . . I had to take my attention away because of the inmates on 7 corridor . . . there was maybe 60 men in there, and when they heard this scuffle automatically they all came up to the front of the grille, you see, so I had to turn my attention to that.

Q. What area?

A. That area. I also had three inmates on the landing. I had three inmates on the landing at the same time, so I believe it was Mr. Loran, Mr. Torrance, and as I say, I can't remember Mr. Young being there at all, in that scuffle.

Q. Did you see anybody hit Mr. Pearce or kick him, or punch him?

A. The only thing I seen was Mr. Loran, he went to grab hold of him and Pearce's shirt nearly came off his back and Mr. Loran, he went back, I never seen Mr. Loran after that.

Q. He went back towards the bottom of the stairs?

A. Yes.

Q. Did he fall down the stairs?

A. That was the impression I got. So eventually they got him down to the bottom of the stairs.

Q. Who got him to the bottom; do you know?

A. Mr. Torrance. I believe there was Mr. Nuttall there, and there might have been another couple of officers, but I just don't remember, so they went down to the bottom of the stairs and Mr. Nuttall instructed Mr. Torrance and I to escort him to the B landing. . . .

Q. So that you took the inmate under restraint at that point yourself?

A. I think I took him under restraint, the left arm.

Q. Mr. Torrance?

A. Mr. Torrance had his right.

Q. Did two other correctional officers pick up his legs at the bottom of the stairs?

A. No, sir.

Q. You don't recall that?

A. No.

Q. Mr. Pearce testified that he got to the bottom of the stairs and two other correctional officers came and picked up one leg each and they had him spread-eagled in the air. Mr. Nuttall told them to let him down and walk?

A. Not in my time. . . .

Q. What was the inmate's attitude at this point? What was he doing?

A. Was he ever up tight. He was really, as a matter of fact, he gave me the

impression as if he was half going mad, you know, he was struggling and kicking and even with the grip you had on his arm, you knew the body was tensed up, you know he was giving it everything he had.

Q. It took considerable force to restrain him then, did it?

A. I would say a bit more force than the ordinary inmate you would get, you know.

McDonald stated that he did not see any correctional officer kick or punch Pearce either on the stairway or the landing, and that while proceeding through the tunnel and in the elevator no one punched, hit, or kicked Pearce and only the amount of force necessary to restrain him was used. He stated that Pearce was "hard to handle" on the way to the elevator.

A. He started to calm down a bit in the elevator. He seemed to be very – really up tight. You know, his nerves had really got shot, like you know.

Q. Sort of reached the breaking point?

A. Yes, reached the breaking point.

Q. Would he have periods when he was violent and periods when he would be more calm is that what you are saying?

A. Well, this is what I am trying to say. He would have walked a bit and all of a sudden you could have felt him tensing up again.

As for placing Pearce in the segregation cell:

Q. Did anything happen as he was going in?

A. No, we got him in and he seemed to settle down a bit and then he made a bit of a charge, you know.

Q. Before you got the door shut?

A. Well, he got out through the first door but Mr. Torrance and I was there and we just bumped him back in.

Q. Was his head banged deliberately against the door as he went in?

A. I did not see his head get banged at all, sir.

Q. Deliberately or otherwise?

A. No, sir.

Q. Could his head have banged against the door when he went in?

A. It could well have done.

McDonald indicated that Pearce calmed down with the arrival of nurse Cabon.

## EVIDENCE OF ROBERT YOUNG

C.O. 2 Young said his first knowledge of any problem involving Torrance and Pearce was when he was coming down the stairs from the floor above. "I heard Mr. Torrance's voice being raised – sort of excited. . . . I saw Mr.



Torrance on the stairs. It was his loud voice that first drew my attention to it."

Young stated that Pearce was "striking blows at Torrance". Torrance was shouting, "That's enough," and he (Young) "ran down the stairs and I attempted to grab Pearce's left arm."

MR. MCRAE. Was Mr. Pearce swinging with his left arm or right arm?

A. Both arms. . . . I then got to the top of the stairs, I got his arm up his back, his left arm. . . . I fell with him, he got me down —

Q. You got down to your knees?

A. Yes.

Q. Was he down too?

A. Yes, I pulled Pearce down with me, I believe Mr. Torrance came down along with us, too. . . .

Q. Did anything happen to Mr. Loran?

A. On the stairway, when we were getting him up, Mr. Loran received a blow in the side of the head.

Q. Did you see that?

A. Yes, I saw it ———

Q. Who struck Mr. Loran?

A. Mr. Pearce.

Q. Mr. Pearce? And after you got down, did the struggling, the violent struggling cease?

A. No, when we got him to his feet we took him down the stairs to the bottom, you know, to the basement, we stopped, and Mr. Nuttall arrived and he was ordering him up to segregation.

Young denied the allegation that Pearce was picked up and spread-eagled at the foot of the stairs. He was of the opinion that it was Loran who had kicked Pearce.

Q. Did you see Mr. Torrance kick or punch Pearce?

A. No, I didn't.

Q. Mr. Loran?

A. I believe Mr. Loran landed a blow.

Q. What kind of blow?

A. I believe Mr. Loran kicked ———

Q. You saw Mr. Loran kick Mr. Pearce?

A. His foot came up ———

Q. Keep your voice up, please.

A. When he was pulling his shirt over his head, we were having one hell of a job restraining him, his feet were going and his arms were going, and we had great difficulty holding him.

Q. Where did Mr. Loran kick him?

A. In the midriff area.

Q. The midriff? You are indicating just below the ribs?

A. I don't know. I couldn't say exactly where it was, but Mr. Loran was in front and tried to pull him down, you see ———

Q. Was that a necessary thing to do?

A. I thought so. As I say, we were having one hell of a time trying to restrain him.

## EVIDENCE OF ANTHONY DAVID WARD

At the time of giving evidence (July 11, 1975) Ward had the rank of C.O. 1. He had experience with the Hong Kong Police, holding the rank of inspector. He stated that he received on-the-job training from senior officers. On May 2 he was on duty in the segregation area. He heard some noise on the landing outside the elevator. "I came out. I saw that Mr. Torrance and Mr. McDonald was holding an inmate and also Mr. Nuttall was following them." He identified the inmate as Pearce.

MR. MCRAE. Was there anything unusual about what was happening?

A. Yes, Pearce was struggling very hard to get free from Torrance and McDonald's hold.

Q. How were they holding him?

A. Holding onto his arm.

Q. One on each arm?

A. One on each arm, yes.

Q. And he was struggling?

A. He was struggling.

Pearce's manner of entry into the segregation cell was a much quieter one than had been related by other witnesses, according to Ward.

Q. Was it necessary to use any force to get him in?

A. No, when he got to the door he stopped and he just entered himself and sat himself on the metal frame of the bed. . . . Mr. McDonald and Torrance stood outside the door and Mr. Nuttall went inside and they both sort of covered Mr. Nuttall at the door, and I just stood outside. . . .

Q. Was there any difficulty getting him inside the cell?

A. No, there was no difficulty. He went in by himself as soon as we got to the door. . . .

Q. Did his head strike on the door as he was going in?

A. No, sir. Not that I could see.

Q. Could it have happened without you seeing it?

A. It might have. I don't think so. I saw everything that happened there. . . .

It appeared in contrasting his evidence with that of others, including other correctional officers, that Ward was making the scene a little too peaceful.

Q. Mr. Pearce complained about having his head deliberately banged against,

I think he said, it's the inner door, the second of the two doors, as he was going in and he complained of having a large swelling on his forehead. Could anything like that have happened?

A. No.

Q. You are sure about that?

A. Yes.

## EVIDENCE OF ROBERT ARNOLD NUTTALL

C.O. 5 Nuttall said he was in the area immediately outside the Chief's office when he heard loud noises. He proceeded in the direction of the noises and discovered that they were coming from 7 and 8 landing. "I could see that there were several inmates, more or less acting as if they were being mistreated, in other words they were not under control. They were milling in the area and I knew the problem and the noise was coming directly from that area. . . . I observed that there was some type of commotion going on on the staircase."

MR. MCRAE. The stairs that lead down to the tunnel?

A. That is correct, sir. . . . I immediately ordered any inmates that were there to stand back and to get out of the way. . . . I ordered them away from there to more or less get a control of the situation, both security and to enable me to see what was going on. I observed on the stairs correctional officer Torrance struggling with an inmate. . . . There was at least one other correctional officer on the staircase. . . .

Q. Mr. Torrance, to take your evidence correctly, was trying to hold Pearce and Pearce was trying to get away?

A. That is correct, sir.

Q. Did you see any blows thrown at that point?

A. No, I did not.

Nuttall described the struggle. He said that Loran lost his footing and went down the stairs, landing at the foot of the stairway, and that McDonald then came to Torrance's assistance and they got Pearce down to the foot of the stairway, "where they had him under good, solid control, where they had enough room to get on either side of him".

Q. Did you go downstairs as well?

A. Yes, sir.

Q. What did you do?

A. I ordered the officers to immediately remove Pearce from the area and get him away from the other inmates who were getting agitated with any activity going on like that.

Q. You told them to take him to the B landing immediately?

A. Yes, sir, I did, and I instructed them to take him down the tunnel straight

on the B line.

Q. Did you see anyone, either correctional officer or inmate, strike or kick another person?

A. No, sir. Not personally, during the time I viewed the incident, the parts I viewed of it. No, sir.

Q. It was all struggling and attempting to free himself?

A. Yes, sir.

Q. And attempting to restrain him on the part of the correctional officers?

A. Yes, sir.

Nuttall's evidence contradicts other evidence that Pearce was taken back up to the landing after the struggle on the stairway.

A. From the foot of the stairs he [Pearce] never stopped screaming and yelling and hollering and struggling violently, from the time . . . I saw inmate Pearce, until he got to the elevator . . . he was continually trying to pull himself away and yelling and screaming, and then he'd all of a sudden go a little limp and drop his full weight on the officers, who as well as trying to maintain a restraining hold on him, were having to bear up his weight . . . and then kind of half carry him, half drag him along two or three feet, and then he'd struggle again quite violently every bit of the way until we got into the elevator. When we got into the elevator he just calmed down and stood there quietly with no problem whatsoever. . . . When the elevator doors opened and we directed him onto the landing, still under containment, he started once again yelling and hollering and struggling extremely violently, sir. . . .

Q. And was it necessary for you to put your hand on him?

A. No, sir.

Q. The other two officers —

A. — were quite sufficient, sir.

Q. They were able to control him, were they?

A. Yes, sir.

Q. They were struggling in the elevator landing and all the way into segregation?

A. Right the way into the segregation area, sir, round into the precise area the segregation landing.

It was Nuttall's evidence that once in the segregation area Pearce "stopped struggling and quietened down and he was just more or less walked to the corner where he was ordered to remove his clothing, and when he was ordered to remove his clothing he did so voluntarily. We did not have to forcibly undress him. He had gone quiet again."

Nuttall's evidence is here at variance with that of the other correctional officers who indicated that because of Pearce's struggling the usual procedure was not adopted of having him change outside the segregation cell and that he was, in fact, put into the cell while still wearing his "jail blues". Nuttall indicated that Pearce had changed to the baby dolls voluntarily.

A. Then I ordered him to go into the cell and I pointed to the empty cell and Pearce immediately just hollered, "No!" or something like that. Mr. Torrance

and Mr. McDonald once again took him in containment, holding on each arm, and it was only with extreme difficulty, and I had to assist, that they managed to force him into the cell. When we got him through the first door he struggled back and forth. We got him through the second door, we went to leave and he came charging again, so we once again had to force him back in the cell. He came charging out again, and it was twice that we had to force the man back in. We got him down and sat him down on the bunk and then managed, just literally by just running out and slamming the door. Otherwise we would have had to fight him back in a third time.

Although the evidence indicated that Nuttall might have been in error as to Pearce's changing prior to going into the cell, I accept his recounting of what occurred when Pearce was put into the segregation cell.

Q. Did you see his head get struck as he was being put in the segregation cell?

A. I don't recall any blows being struck to his head at all, sir. We were mainly trying to wrestle him in.

Q. He testified that Mr. Torrance deliberately . . . banged his head against a metal door on the way in, which caused a swelling on the forehead?

A. No, sir. I did not see Mr. Torrance deliberately bang his head against the door, but he could have banged his head against the door, because I know I got a darn good bruise off the door casing myself during the incident, sir. . . .

Q. You heard how Mr. Foster described Pearce's being held on either side and one of the correctional officers who was not holding him kicked Pearce in the stomach twice. Did you hear that evidence?

A. Yes I did, sir.

Q. Did that happen?

A. It did not happen, and I don't know how anybody can hold onto one man from either side, and fighting and kicking, and the man to get his foot up high enough —

Q. Having gotten him lodged in the cell, what happened then?

A. Just as we were more or less rearranging our clothes, sir, nurse Cabon came into the area. I said to Mr. Cabon that I needed to have an inmate checked out, because any inmates that go into segregation must be checked by medical personnel. . . . Mr. Cabon said words to the effect of all right, he will check the man out, so I turned and looked through a small observation window in the segregation door and the inmate Pearce had removed his segregation garment and was standing naked in the cell.

Now, he appeared to be once again quietened down . . . and I thought, well, it would be safe enough to take the nurse in there with me and I ordered the cell opened and entered the cell and the nurse followed me in. Then I instructed the inmate Pearce to turn around —

Q. So you and nurse Cabon and Mr. Pearce were in the cell together?

A. That's correct, sir.

Q. This time Pearce was naked, he had taken his baby-doll segregation garment, had taken it off. Without being requested?

A. Without being requested. It was off when I looked through the window. He must have pulled it off immediately after we left the cell. The inmate turned



around in front of Mr. Cabon, some words were spoken, I don't know what it was, sir, to what extent it was, and Mr. Cabon left the cell and I backed out of the cell and secured the door once again, sir.

Q. Was there any unnecessary force used on Pearce while you were present?

A. No, sir.

Q. Was he ever struck or kicked by any correctional officer while you were present?

A. No, sir. It was strictly a wrestling match.

Nuttall also gave what seemed to be a valid explanation of Pearce's statement that he was telling Cabon that Pearce was "okay".

Q. He testified that you kept telling the nurse that he was okay, not to waste any time looking at him, that he was all right. Did that happen?

A. I don't remember that, sir. The only reason why I would say something like that would possibly be to let Mr. Cabon know that he is okay, that he is not going to jump you, because he had been extremely violent just immediately prior to that.

## EVIDENCE OF PIERRE EMMANUEL EDESSE CABON

Nurse Cabon said he "saw Mr. Pearce and he was in the segregation and he appeared disturbed and I examined him. There was no bruises. Apparently he was charged with murder and he just returned from court that day. So the duty doctor was contacted, so the doctor ordered some largactil [tranquillizer] by injection to be given to him."

Cabon stated that Pearce's segregation garment was removed so that he was able to conduct a visual examination. In addition to his evidence that there was no visible sign of injury on Pearce when he first examined him, Cabon stated that he asked Pearce about any injury and Pearce did not reply, nor did Pearce say anything when Cabon told him that he was going to contact the doctor about some medicine for him. Pearce made no complaint to Cabon about an assault.

MR. MCRAE. Did Mr. Nuttall, while you were attempting to examine Pearce, in any way interfere with your examination or attempt to hurry you up by saying, "He is all right, he is all right" or anything like that?

A. No. Nobody, because as a nurse I know I have to do my duty to find out what is wrong with them.

Q. Mr. Nuttall was present during the examination?

A. Yes, he was.

I accept the evidence of Nuttall and Cabon that Nuttall did not in any

way interfere with Cabon's examination. This, of course, would be a serious allegation against a senior officer and would be directly contrary to the purpose and spirit of the procedure that was adopted after this Commission commenced its hearings, namely, that there be a medical examination of all persons going into segregation.

## EVIDENCE OF WILLIAM JOSEPH TAYLOR

The Superintendent advised that he had given Pearce a penalty of 10 days in segregation. He said that earlier he had spoken to both Loran and Torrance. He stated that Torrance had come to his office on the Friday afternoon and complained that he had been assaulted again, or words to that effect. "We sat down and had a talk about it." Taylor said that later he had seen Loran and Torrance together and that Loran had a bruise on his cheek. "They were concerned about discipline and the frequent assaults on the officers and we sat down and discussed this."

MR. MCRAE. Did you give them the option of laying a charge?

A. They always had this option.

Q. Did you put that to them?

A. I am not really sure whether I did that or not.

Q. But they went away and you felt they were considering whether or not to lay charges, both Mr. Torrance and Mr. Loran?

A. Right.

Q. Did you find out later they decided not to lay criminal charges?

A. When I came in Monday I contacted I believe Mr. Mulhern, my deputy in charge of security, and he said he got on the phone some time that day to Mr. Torrance or Mr. Loran, I think one of them was not on duty that day, and finally ascertained that they did not want to lay charges so then I proceeded with the misconduct.

Mr. Taylor said that he read the allegation of misconduct to Pearce who denied striking any officer.

A. Then he started to go into this tirade, "It is my charge and my colour and I am not going to get a fair shake," and he just kept going on like that, you know. He thought I was going to come in there and not listen to him anyways so he did not want to talk to me. No sense in him going on any further, as he would not get a fair shake anyway.

Q. Did he complain to you then about having been assaulted or having unnecessary force applied to him?

A. Not so much complain. He said he did not strike him; it was the officer striking him; and I read the charge; it indicated it could have been, you know,

a scuffle, and I thought that with the evidence I had at that time that there was enough to sentence him.

Q. Did he mention to you a complaint that he had been visited when he was alone in the segregation cell?

A. Yes, he did. I believe that was on the Monday and I already had a report from Mr. Walter who said he had investigated and found no foundation in it.

Q. He told you on Monday the 5th that someone had come into his cell after he had been put in segregation?

A. I go through the segregation cells every morning, or one of my deputies does, and by that time Mr. Walter's report was on the way to me.

Q. He had already made such a complaint to Mr. Walter?

A. Yes.

Q. And you tried to determine if there was any truth to it but were unable to substantiate it?

A. Mr. Walter said he could find no foundation to it.

Q. You accepted Mr. Walter's report?

A. Yes.

From the above it was indicated that Pearce was on the defensive and did not think he would obtain a proper hearing. Mr. Taylor also mentioned that Pearce told him he had a witness. There is nothing in the Misconduct Report to indicate that a witness was interviewed.

Although I found Mr. Taylor to be an able and conscientious jail administrator, and exceedingly forthright and honest in his evidence, this does not justify the procedure of not calling Pearce's witness, even though from all other evidence Mr. Taylor might have been satisfied that the witness's evidence would not have changed the verdict. It is akin to a judge at a trial making a finding without having heard all the evidence. Pearce's witness should have been called no matter how irrelevant the person conducting the misconduct proceedings may have thought his evidence would be.

## EVIDENCE OF JAMES LORAN

Loran held the rank of C.O. 2 and in addition was one of the union representatives, and the president of the local at the Toronto Jail. He had been a correctional officer for just over five years and was working in the male clothing issue area.

He went upstairs for a tea break and "on my way up I noticed a scuffle going on. Mr. Torrance was . . . on the steps."

MR. MCRAE. How far down from the top of the steps would that have been?

A. I would say about half way sir, and naturally as a correctional officer I went to my fellow correctional officer's assistance.

Q. Mr. Torrance was down, was he on his back or on his side?

A. He was on his back, but it's very tight and a small passageway, as you probably know. There wasn't much room for them to manoeuvre.

Loran stated that Pearce was on top punching Torrance. He said that he saw three or four blows land on Torrance and that he then grabbed Pearce.

A. I grabbed him by the shirt and pulled him off and as I pulled him off he landed a sucker on me.

Q. Where did he hit you?

A. Right in the chest, sir. . . . He seemed to turn around for a moment, leaving Mr. Torrance, and banged me on the chest.

Q. What effect did this have on you?

A. He dropped me.

Q. Knocked you back?

A. Knocked me back down. I got back up again —

Q. How far down did you go?

A. Three or four steps.

Q. Did you lose your balance and go off your feet?

A. Yes. I lost my balance. I went down and landed on my knees and came back up again. And he smacked me on the side of the face.

Q. Mr. Pearce did?

A. Yes, sir.

Q. And you indicated just below your left eye?

A. Yes, sir.

Q. What did he hit you there with?

A. His fist.

Q. That was the second time?

A. That was the second time.

Q. What effect did this have?

A. Well, at that particular time, sir, I thought this man has got to be subdued.

Q. Did it cause any damage to your face?

A. Not real damage, but it puffed up quite a bit. . . .

Q. Didn't knock you down this time?

A. No, but then I thought he's got to be subdued. . . . I knew his charges. I knew he was charged with the murder of a defenceless taxi-driver and I had no intention of being number two, so I grabbed him by the shirt and raised it right over the top of his head, put him in a lock, and managed to swing him around and got him on the stairway and I put my foot right on top of him. . . . That seemed to take the wind from him.

Q. You put your foot on his chest?

A. Yes, sir. I held the shirt.

Q. Held the shirt over his head?

A. It did not actually go over his head — just held it here . . . I held it that way, I put my foot on and that seemed to take the wind out of him. He quieted down a bit. By then Mr. Torrance came to my assistance and I believe Mr. McDonald came as well.

As Pearce was escorted back to 7 and 8 landing, Loran thought that he was going to be placed in the small holding cell opposite Corridor 8. He stated that Pearce was “still acting like a madman”.

Q. Was he saying anything?

A. He was cursing and swearing and flaying about.

Q. We heard he was screaming “murder”?

A. Yes, that was the funny thing. He started shouting “murder, murder, murder”.

Q. Murder?

A. That was his words, and I thought it was very strange, he is charged with murder and he is shouting murder . . .

Q. But nobody was murdering him?

A. Oh, no, far from it. . . .

Q. Other than putting your foot on the inmate’s chest, as you have described, did you see anybody else kick or punch Pearce?

A. No, sir.

Q. Mr. Pearce indicated in his evidence that he was punched on the back of the neck, kicked on the right leg and shin and kicked in the area of his penis?

A. No, sir, I saw nothing of that at all.

Q. And you put your foot on his chest?

A. Yes, sir, I did.

Q. That was not really in the nature of a kick?

A. Oh, no. The idea was to just hold him there. I am an ex-serviceman also.

Q. You have been in the service, have you?

A. Yes, sir, I have.

Q. Someone said that you had been knocked down the stairs. Would that be somewhat of an exaggeration to say that?

A. No, the punch that landed on my chest knocked me down the stairs.

Q. A couple of steps?

A. Yes.

Q. You were not knocked all the way to the bottom?

A. Not to the bottom, no.

Earlier evidence had placed Loran’s height at 5’10” and his weight at 165 pounds. My recollection is that Pearce was shorter in stature but of stockier build. As for the laying of criminal charges in the regular courts, there was the following evidence.

Q. Did you have any discussion with Mr. Taylor about laying criminal charges?

A. Yes, I was advised the following morning by various senior officers about laying criminal charges against Pearce and I thought it was a waste of time because the charges he is already facing are too serious. I thought it would be better to charge him internally and give him 10 days in segregation or whatever the case would be to let him know that at least we have got some discipline, we can run our institution without going that far, because he gets a light sentence and three months for assault, it is a waste of time.



## EVIDENCE OF EDWARD TORRANCE

Torrance gave evidence that on May 2 he was again on duty on the afternoon shift working the Corridor 7 and 8 area. He said that he took turns with Young in escorting inmates from the corridor and that McDonald was also working with him that day. Torrance said that he had Pearce's paper work and "I called him and another inmate out. I was going to take him over to the new building, to 2C." The other inmate was identified as Farouse.

A. The first words I said to them were to tuck their shirts in and carry their towels. The reason is they don't want them wearing their towels around their neck. So Farouse did tuck his shirt in but Pearce made no attempt to tuck his shirt in. I asked him again and he was talking to somebody else, but he was mumbling, something about me being white. Something like that - I remember those words. . . .

MR. MCRAE. This was the second time you told him to tuck his shirt in and he mumbled something and all you heard was "white"?

A. Yes.

Q. You don't know who he was talking to?

A. No, not directly. I know when he didn't tuck it in the second time, I knew he wanted to give me trouble. I asked him again and he half-heartedly attempted to tuck it in. By this time we were moving and I, as I do in many cases, just touched him on the shoulder, just to point the way that we were going. . . .

Q. Did you push his shoulder?

A. No, just a touch, to indicate which way. . . .

Q. What happened when you touched his shoulder?

A. He didn't like that idea and he was pushing my arm off.

The motion of Pearce was indicated as being a throwing of "both his arms to his shoulders sort of backwards in a twist". Torrance added, "He didn't like the idea of me touching him."

It is suggested that in training programs correctional officers be instructed as to the resentment by some inmates of the invasion of the "defensive space" about their bodies.

Torrance said that as they were approaching the stairs "I again told him to tuck in his shirt, but it was half in and I wasn't as concerned with that as with his attitude, you know. . . . He resented me I guess very much."

It would appear from the above that Torrance was unable to disregard Pearce's attitude as a more experienced and more objective correctional officer might have. Instead he allowed himself to be upset by it.

Torrance said he then heard his name being called from Corridor 7 and 8, he believed by McDonald.

A. I told the inmates to stop at the first step. So I reached down and grabbed ahold of his shirt.

Q. This is Pearce's shirt?

A. Yes.

Q. Indicating your left hand out, and you took ahold of his shirt right, by the collar?

A. Right. By the collar, yes. And I told him to stop. The reason being, normally or sometimes you pick up some papers and you have to go to the new building and if you can pick them up there, and it saves another trip. And I thought Mr. McDonald maybe had some papers to go over.

Q. So you grabbed Pearce's collar?

A. I grabbed his collar and Pearce turned around. I was sort of expecting something with him because he was sort of violent at the time.

Q. You were expecting a reaction?

A. Well, I wasn't sure about what kind of a reaction but I was sort of expecting him to say something. I didn't really think he would take a swing. But he turned around quite fast and took a swing at me with his left.

Q. While you were holding onto his shirt collar?

A. I had ahold of his shirt collar, that's right, and he turned around and with his left he took a swing at me.

Again, a more experienced correctional officer or one using better judgment would not have grabbed Pearce by the collar especially when, as Torrance said, "I was sort of expecting something with him because he was sort of violent at the time."

Torrance stated that he "sort of blocked" Pearce's swing. At the same time he "went back a little bit" attempting to avoid it. "With me leaning back, I lost my balance and started to fall backwards. This is what was in my head at the time — I believe he was up for a heavy charge, and I wasn't going to lie down and let him stand over me under any circumstances, so I pulled him along down with me. And as we were going down he was throwing blows which were quite severe."

Torrance stated that he was hit several times, "Three or four, maybe five." Following this he went to grab Pearce around his neck and received a bite on his thumb. The mark from the bite was still present when Torrance gave evidence more than a month and a half later.

The next thing related by Torrance was Loran coming to his assistance and pulling Pearce from him at which time he said that Pearce punched Loran. "He was really wild by this time, just like a wild animal. He was really swinging at anybody at that time." Torrance was of the opinion that both Young and McDonald attempted to restrain Pearce who was then taken back to the top of the stairs. "Well, Mr. Nuttall was already there too and once we got a good hold of him by the arm he authorized us to take him to segregation."

Torrance related that Young and he took Pearce under restraint down the stairs and at the bottom of the stairs McDonald took over from Young. Torrance described the hold on Pearce as he was being escorted as a come-along hold which he stated to be "when your wrist is half up your back and your wrist is twisted".

In addition to the bite on the thumb, Torrance said, he had "a bleeding nose" and he thought this was a result of being punched on the stairway.

He said he was also "a little sore" all over, and particularly the chest.

On the way to segregation Pearce was "struggling pretty wild" and was still shouting and screaming. It was Torrance's evidence that Nuttall ordered the removal of Pearce's boots at the bottom of the stairway as a precautionary measure. "When you have somebody as wild as that, it is always best to remove their boots in case you do get a kick in the wrong place."

Torrance said that in the elevator Pearce calmed down "a little bit" although when he got off the elevator he was "still struggling pretty wild . . . he had cooled off a little bit and come back again".

Torrance further related, "We got a cell opened and he started to remove his clothes outside."

Q. Outside of the cell?

A. Yes. Unassisted.

Q. Unassisted?

A. Unassisted. I believe he left his pants, underpants and socks on and this is when he started again and we had to remove them as he was going into the segregation, into the cell. . . .

Q. Now, did anything happen as he was going into the cell? Was it necessary to use force to get him in the cell?

A. Yes, push him in, yes.

Q. Would you describe how you got him into the cell?

A. Well, it is a very narrow area . . . it is very awkward if you have an officer on each side. . . . I still had ahold of him and Mr. McDonald still had ahold of him at the time and Mr. Nuttall was in between the two doors. I guess the three of us just assisted . . . it was just like a squeeze. There isn't much room. It was just a case of keeping him in.

Q. Did anything happen when he went in as far as banging his head?

A. I never seen that.

Q. What happened when he got in there?

A. I believe he came back at us and Mr. Nuttall was ahead of me and I think he got another push in.

Q. Mr. Nuttall had to push him back in?

A. Yes.

Torrance indicated that he then left the area and that he did not see Pearce again that day. He denied making any later visit to Pearce, as had been alleged. He also denied the allegation that he had said that he could do anything he wanted with Pearce. He further denied striking Pearce in the back of the neck on the elevator, or "kicking him in the stomach and penis area".

With reference to Pearce's allegation that his head was deliberately banged against the door while entering the segregation cell, Torrance said that he (Torrance) did not do that. "He could have banged his head on the wall, but he definitely didn't receive it from me."

If the hassle on the stairs was a result of Torrance's indiscretion in the manner in which he was moving Pearce along, this is much less serious than the allegation made by Pearce that after he was put in segregation Torrance

later returned with another correctional officer and, without provocation, punched him. This allegation was specifically denied by Torrance.

## EVIDENCE OF NORMAN LEONARD JONES

As mentioned in connection with the Benn allegation, Inspector Jones's experience in investigation included seven and a half years with the Ontario Provincial Police, and since December 1972 he had been working with the Ministry of Correctional Services as an inspector of jails and investigator of complaints. In addition to giving verbal evidence, Mr. Jones wrote a report on the Pearce incident which was filed as an exhibit.

His investigation arose out of allegations of mistreatment made to the Ministry by Pearce's solicitor, Clayton Ruby. In Mr. Jones's report to his superior, S. Teggart, Director, Inspection and Standards Branch of the Ministry, he dealt with a number of allegations made in Mr. Ruby's letter of complaint.

The main allegation relevant to the Commission's terms of reference was reported, in part, as follows:

### COMPLAINT OF ASSAULT BY OFFICERS AT THE TORONTO JAIL

Inmate Pearce, followed by inmate Farouse, with Mr. Torrance beside inmate Farouse. All proceeded towards the basement stairs. Torrance apparently touched inmate Pearce's shoulder, which inmate Pearce objected to; however, Mr. Torrance continued the practice. On gaining the top of the stairs, inmate Pearce met inmate L. Manderson, whom he knew, and a few brief words were spoken. Inmate Manderson was *en route* to the court cells. Mr. Torrance advised both to move along. Mr. Torrance and the two inmates entered the stairs passageway and commenced to descend. Mr. Torrance apparently issued little pushes on inmate Pearce's back. Inmate Pearce continued to object to Mr. Torrance's behaviour. Inmate Farouse, who was behind inmate Pearce, had a clear view of these proceedings. After three small pushes, Mr. Torrance held the back of inmate Pearce's shirt, pulling him backwards. Inmate Pearce half turned, both Mr. Torrance and inmate Pearce tumbled to the floor on the stairs. Punches were thrown by inmate Pearce and Mr. Torrance.

The findings on this allegation by Mr. Jones were as follows:

1. Mr. Torrance aggravated inmate D. Pearce by pushing and causing him to fall on the stairs. Therefore, causing inmate Pearce to react in a violent manner.
2. Inmate Pearce did assault correctional staff of the Toronto Jail in an altercation on 2 May 1975, as charged in the Misconduct Report.
3. Inmate Pearce was the subject of unnecessary force used by Mr. E.



Torrance, C.O. 1. The assault took place in the segregation area 1B in the form of kicks to inmate Pearce's legs as witnessed by inmate E. Foster. Inmate D. Pearce was advised that in my opinion, there was evidence to proceed with an assault charge against Mr. Torrance for his actions, however, Mr. Pearce declined to lay a common assault charge against Mr. Torrance on advice of Mr. C. Ruby, Barrister.

It was also mentioned in Mr. Jones's report that correctional officers Loran and Torrance received injuries and that inmate Pearce was "extremely violent" in his manner.

The conclusion of Mr. Jones's report read as follows:

During this investigation, a total of 10 written statements were obtained from inmates and staff of the Toronto Jail. Many other inmates and staff were interviewed, however, no statements were taken. Inmate E. Foster was the final witness and also the key witness to be interviewed in this case. Further interviews were abandoned as evidence discovered is sufficient to proceed with a police investigation. The opportunity was presented to inmate Pearce to lay criminal charges, however, on advice of Mr. Ruby, he declined.

Mr. Torrance's actions are open to question from the beginning of this episode until inmate Pearce was placed in segregation. Mr. Torrance's actions are not in keeping with the standards which are expected of correctional officers in this Ministry.

It is recommended that consideration be given for the termination of Mr. Torrance's services. There is ample evidence which shows plainly that Mr. Torrance's actions goaded inmate Pearce into the violent behaviour on the stairway. Had Mr. Torrance not aggravated inmate Pearce, the investigation would not be necessary. Mr. Torrance's further actions of an assault in the segregation area only prove further, Mr. Torrance's failure to meet the requirements of his position.

Mr. Thomas's cross-examination of Mr. Jones contained the following exchange:

MR. THOMAS. And yet your conclusion was that there was ample evidence which shows plainly that Mr. Torrance was goading inmate Pearce into the violent behaviour on the stairway?

A. I believe so, sir. Yes.

Q. I see. Well, we've heard evidence from a man by the name of Mr. Dean who indicated that in his opinion Mr. Torrance was just doing his job and that it was the reverse, really, and that he was goaded into action. Do you think that type of information might have changed your opinion?

A. Yes, sir. Yes. Maybe.

An inquiry into the validity of Mr. Jones's recommendation of dismissal is beyond this Commission's terms of reference, and it was specifically excluded with the knowledge of all parties. I therefore do not propose to comment on Mr. Jones's recommendation for dismissal.



As for the report itself, it is always easy in the light of later events, and in this case in the light of additional evidence that came before the Commission, to second-guess the person conducting an investigation and his subsequent report. Nevertheless I think that some constructive suggestions are warranted in this case.

Even though Mr. Jones felt he had the full story, he should have followed up Torrance's advice to him that there were additional witnesses, and these witnesses should have been interviewed, particularly in view of the gravity of Jones's recommendation. Jones defended his actions in not doing so by saying that he had already written his report and the matter was out of his hands. This should not, however, have prevented him from making further investigations and forwarding an addendum to his report.

According to Jones, the matter of additional witnesses was mentioned to him by Torrance in a rather informal way. Torrance had indicated earlier that there were no additional witnesses.

THE COMMISSIONER. And, considering the seriousness of the conclusion that you came to, don't you think it would have been advisable to have interviewed these other witnesses, even if your report had been completed?

A. I believe at that time, sir, the decision had been made and it was already in the process of taking effect.

Q. Did you speak to anybody and tell that Mr. Torrance had now come up with some other witnesses?

A. No, sir. I thought I had done an investigation and spoken to the people that were involved and I reached a conclusion. I had asked Mr. Torrance at the beginning if he had any witnesses as to what had taken place and he told me no, he hadn't. It's always easy to go up after and find witnesses to what had taken place later on.

Q. Oh, yes. But investigations sometimes are ongoing and it just seems to me that, in view of the serious recommendation that you made, maybe this investigation shouldn't have been completed as of the day of the filing of your report. Maybe it should have been re-opened for the purpose of interviewing these witnesses. It may be that you would have concluded that their evidence didn't add anything, but out of fairness I'm just wondering why the matter was terminated as of the date of the report. You felt it was out of your hands at that time?

A. That is correct, sir.

Q. What actually did Mr. Torrance say to you with reference to these other witnesses?

A. . . . I was in the Chief's office. I was down on another matter. Mr. Torrance came into the Chief's office . . . and he said, "Hello Mr. Jones, how are things going?" or words similar to that and I said, "Pretty good, no problems." And he said, "Oh, by the way, I have some more witnesses." I said, "They are not needed", something on the lines. That is not exactly word for word what was said.

Q. You did not ask him who the witnesses were or whether they were inmates or correctional officers.

A. No, I did not.

Out of fairness to all parties it is recommended that in future investigations, where there are allegations of unnecessary force being used, all possible witnesses be interviewed and that in the statements of the principal parties the names of all known witnesses should be included, with an acknowledgement that the party knows of no other witnesses.

If the recommendation for a Toronto Jail Council is implemented, then investigations and reports such as Mr. Jones's reports would be made available for review by it. For this purpose the original statement obtained by the investigator should be attached to the report so that the council would have an opportunity to decide (a) whether statements have been taken from all possible witnesses, (b) whether a further investigation should be conducted, and (c) whether the council concurs with the investigator's conclusions.

Having had the advantage of Mr. Jones's report and of the evidence of many witnesses, both inmates and correctional staff, and it being within our terms of reference to express an opinion on the alleged assault, I find that I am in agreement with the findings of Mr. Jones, namely, that Torrance's actions did in fact goad inmate Pearce into the "violent behaviour on the stairway" and that therefore Torrance's actions in pushing Pearce and later grabbing the collar of his shirt were the initiating factors in the episode, and were it not for these in all probability there would not have been any incident.

The matter of Jones's recommendation for dismissal of Torrance, and Torrance's subsequent dismissal, are not within the ambit of this Commission. The matters of recruitment and training, however, are relevant. As for recruitment, there was some question as to whether Torrance had made full disclosure of his previous short employment at the Mimico Jail. Since each institution recruits and hires on its own, rather than through regional offices, it is suggested that a central Ministry file be kept on all applicants as well as of those hired as correctional officers. This central file might be used as a source of recruits for all institutions. It might also be used to assist in screening and vetting applicants and cross-checking information on previous applications to other institutions.

As for training, the two cases involving Torrance and inmates Benn and Pearce could be used as examples in instructing correctional officers on how to avoid, or at least lessen, inmate tension and confrontation.

Mr. Ruby's other allegations, with Mr. Jones's findings, included:

Complaint of officers subsequently visiting the segregation area and striking Pearce. "Allegation unfounded."

Complaint of officer subsequently visiting Inmate Pearce and addressing racial epithets at him. "Allegation unfounded."

Complaint of Pearce not being advised of the nature of the misconduct charge. "Allegation unfounded."

Complaint of Pearce not being advised of the right to call witnesses at misconduct hearing. "Approved procedures were adhered to. Allegation unfounded."

There were some additional allegations of a less serious nature which

were also unfounded and which were not relevant to the main issue of the assault.

## PEARCE SUMMARY

The Pearce allegation contained three separate episodes. The first included what occurred outside Corridor 7 and on the stairway leading to the basement tunnel; the second involved the alleged unnecessary use of force after Pearce was ordered to segregation and until he was locked in the segregation cell; and the third was referable to the alleged return visit of Torrance and another officer while Pearce was in segregation.

Torrance related that the incident began when Pearce repeatedly refused his order to tuck in his shirt. Rather than accepting that Pearce's shirt was hanging out, I believe the cause of the incident was as Barclay stated he was told by Torrance, namely, that Pearce was reluctant to go downstairs. Pearce wished to chat, or at least pass some words with his friend Manderson whom he had not seen for a time. As inmate Monckton stated, the correctional officers were quite busy at the time with inmates coming back from the various courts. It would appear that Torrance pushed Pearce to move him along while they were near, or on, the stairway. This was resented by Pearce. If Torrance was holding Pearce by the collar, there may have been further resentment. According to Pearce, he "flicked" Torrance's hand away. The "flicking" may have been a more positive kind of striking. In any event, Torrance did not tolerate this action by Pearce and was short in patience at the time. This, together with Pearce's resentment, his presumed worry about his case, and his general hostility, was the spark that ignited the short fuses of both Torrance and Pearce.

As was indicated earlier, I am of the opinion that Torrance used poor judgment in his initial dealings with Pearce. This eventually caused Pearce to strike out at him. The steps then taken by the correctional staff were necessary in order to contain and control a first struggling and subsequently "violent" Pearce.

With reference to the second episode, I accept the evidence of Nuttall and I find that no more force than was necessary was used in placing Pearce in segregation. I find that Pearce strongly resisted being put into the segregation cell. I believe that his head did strike the door jamb of the segregation cell, but that this was a result of the struggling at that time and not of a deliberate act on the part of the officers.

Reverting to the alleged later segregation visit, in which Barclay and Torrance were said to have gone to segregation, and during the absence of the segregation officer to have visited Pearce who was charged with the murder of a taxi driver, there was the denial by both Torrance and Barclay. Against this was the identification of them by Pearce, from the book of correctional officer photographs. Added to this was the coincidence (there

was no evidence that Pearce himself knew this) that Barclay was a former taxi driver who might have "related" to the highly publicized and most unfortunate murder of another taxi driver, and Torrance's resentment at having been struck by Pearce during the struggle. These ingredients create a motive. But motivation, although it may assist in finding a certain fact to be true, standing alone without any other support is not sufficient proof.

Is Pearce's identification of the officers the added support required for a finding against both Barclay and Torrance? The thought of such action taking place in a jail which is supposed to protect the security of its inmates is frightening. The risk of being found out and the resulting disciplinary punishment would hardly balance the satisfaction that might be derived. This should be taken into account in weighing the possibilities and probabilities.

On the balance, I would have to say that although it is possible that Barclay and Torrance entered Pearce's segregation cell and assaulted him, it is more probable that they did not. This does not rule out the thought that Torrance, together with Barclay or another correctional officer, might have visited the area without entering the cell. There was, of course, no need for them to visit as they were not on duty in that area.

To guard against such an eventuality, it should be obligatory for a correctional officer who visits the segregation area, for any purpose whatsoever, to enter his name, the time of the visit, and the purpose of the visit in the segregation log book. Senior officers should ensure that this procedure is known to the correctional staff and that it is followed without exception. A breach of such procedure should carry with it severe disciplinary penalty.



## The Switzer and Malouf Allegations

*"Q. Do you consider yourself to have an alcohol problem? A. Yes . . . I drank after-shave lotion before and rubbing alcohol. Q. I gather that you suffer from time to time with fits of depression; is that right? A. Yes. Q. And on several occasions you have been depressed to the stage where you attempted to injure yourself – suicidal attempts? A. Not suicidal attempts . . . I am supposed to get medication, and sometimes they cut me off medication, so I have to have medication and the only way I can manage to get it is to cut my wrists . . ." (Evidence of George Switzer)*

*"Mr. Bennett had wrote down what I wanted and . . . I put an 'X'. I signed it with an 'X' . . . he started to laugh at me. . . . Okay I says to Mr. Bennett, I says: 'Come on now, it's not a smart thing to do, is laugh at someone who can't read and write.' He still had a grin on his face and I threw a cup at the grille gate." (George Switzer)*

*"I was pretty hyper and pretty mad at that time . . . and when I get that way, sometimes I don't know what the hell I am doing." (George Switzer)*

*"So if someone is halfway fair with me and talks reasonable to me, I will talk the same way with them . . . if they want to be snobby and sarcastic about it, well, I can be the same, too." (George Switzer)*

*"It's an awful feeling when you get thrown out of society and into jail, and then when you get into jail, which is the skid row, and nobody talks*



*to you. I figured that if that was the way it was going to be I would rather go into the hole and talk to myself.” (Stanley Malouf)*

*“My nose exploded in blood.” (Stanley Malouf)*

*“When you get nailed with all somebody’s might in your back, you either run or turn around and face him, because it is going to happen again. It just doesn’t happen once.” (Stanley Malouf)*

*“Q. I am putting it to you that Bennett did not hit you in your back at all, that upon your emerging from the corridor you turned around and swung at Bennett like a lion springing at its prey; is that not the case? A. I’m afraid not, sir. Q. You are afraid not? A. It wasn’t like that, no. I think I was the prey; Mr. Bennett was the lion. Q. Mr. Bennett was the prey on the previous occasion in the corridor? A. No, Switzer was the prey in the corridor. Q. You got the better of Bennett in the corridor previous to that occasion? A. Somebody’s got to win.” (Evidence of Stanley Malouf)*

*“In 14 years in the service, sir, I have never seen anything like it. (C.O. 2 Thomas Davey commenting on actions of C.O. 1 Glen Roy Bennett)*

*“Mr. Bennett proceeded to kick Switzer. He just totally overreacted. He just rained kicks on the boy and almost the same instant all the inmates in the corridor migrated up into that area.” (Walter McCullough)*

*“This was when I got frightened, because I thought we were really going to have a battle here . . . I know how inmates react. The scene was fraught with peril. I looked for other guards and I saw Mr. Davey at the end reach for the phone and I knew that within a short time there would be guards there.” (Walter McCullough)*

*“I have perfect control of my faculties, sir. When I am taunted by inmates I know that . . . their normal reaction is to get you started or to get you heated and the most thing I do when they taunt me at the most I may laugh. I do not respond; I just laugh.” (C.O. 1 Glen Roy Bennett)*

A typical floor plan in the new building is that of the second floor. There are two corridors, or ranges, on the southern part of the floor. These are known as 2A south and 2A north. On the northern part of the floor there are two similar corridors, or ranges, known as 2C south and 2C north. Between these is the landing, housing the elevators, stairway, and three rooms for visitors. In the central portion, to the west, are the segregation cells, as well as an area designated as an exercise area for inmates in segregation. The corridors thus consist of cells and an open day area. The cells are locked during the day. The locking of the cells is done automatically from a control guard station. (Cells must be individually locked and unlocked in the old

building.)

Corridor 2A was one of the special corridors housing inmates who were not considered "safe" for other sections of the jail because they were charged with sexual offences or because of certain sexual behaviour or mannerisms that might make them the prey of stronger inmates or the butt of jokes or ridicule, or because they might pose homosexual problems.

Among the inmates was one, Stanley Malouf, whose name was prohibited from being mentioned by the news media because he was involved at the same time in a jury trial. This was in accordance with our Commission policy and procedure. After Malouf's trial, his name was used, and he was a rather important witness in the George Switzer incident as well as being the subject of an alleged assault at the hands of C.O. 1 Glen Roy Bennett.

The incident involving Switzer occurred at approximately 4:00 p.m. on May 7, 1975, when there were 15 inmates in Corridor 2A south and Bennett was the correctional officer on duty for 2A south and 2A north.

## EVIDENCE OF GEORGE FREDERIC ROY SWITZER

This inmate was aged 31. He said he could not read and could only write his name if it was spelled for him. He had completed Grade I at school.

MR. EVANS. You are sure you have never written your name on a personal property declaration?

A. That's right. I have tried to write. Maybe I tried to write it and it didn't come out the right way, but I tried to write it.

Q. You have tried to write it?

A. Sometimes it doesn't come out the way it should. I write my sister when I was in Penetang, stuff like that, and the way I write some people can't understand it, but my sister and my mother have always understood it.

Commission counsel questioned Switzer about his reason for being in the Toronto Jail and about his health.

MR. BYNOE. Were you convicted on April 25th, 1975, of the offence of having a weapon for a purpose dangerous to the public peace and an offence of failing to comply with the conditions of probation, and you were sentenced to six months definite and six months indefinite, concurrent on those sentences?

A. That's right.

Q. I understand that you have some medical problems; is that correct?

A. (witness nods head).

Q. And what are they, generally?

A. I take seizures.

Q. All right. Is that because of epilepsy or suspected epilepsy?

- A. That's what they said at the jail, yes.
- Q. Yes. And what other problems do you have?
- A. My leg.
- Q. Your left leg is injured?
- A. (witness nods head).
- Q. And do you have full use of that leg?
- A. Yes. I have limped on it for quite a while. Sometimes it gets weak and I go down on it, like I fall on it.
- Q. All right. Now then, have you any other problems? How about the heart? Any heart condition? Heart murmur?
- A. (witness nods head).
- Q. Is that yes?
- A. Yes.
- Q. All right. And have you had any drug problem?
- A. Well, the last time I was taking drugs.
- Q. Is that speed?
- A. Well, yes, speed and smoking marijuana.

The last time that he indulged in drugs was in the same year as when he gave evidence, namely, 1975.

- Q. . . . have you had any occasion to be in any mental institution?
- A. Yes. . . . I have been in and out of that place so many times, I couldn't remember. . . .
- Q. You indicated you had an alcohol problem. Have you been drinking for some number of years?
- A. Well, I have been drinking for quite a while.
- Q. Do you consider yourself to have an alcohol problem?
- A. Yes. . . . I drank after-shave lotion before and rubbing alcohol.
- Q. I gather that you suffer from time to time with fits of depression; is that right?
- A. Yes.
- Q. And on several occasions you have been depressed to the stage where you attempted to injure yourself — suicidal attempts?
- A. Not suicidal attempts . . . I am supposed to get medication, and sometimes they cut me off medication, so I have to have medication and the only way I can manage to get it is to cut my wrists. . . .
- Q. You injure yourself to get the attention of the guards, to get the medical people, and then when you get the medical people —
- A. I get my medication.
- Q. You get the medication you require? Right.
- A. Yes. . . .
- Q. I understand, Mr. Switzer, that on or about Wednesday, May 7th, at approximately 4:00 p.m. . . . you were in the Toronto Jail in 2A south. Is that correct?
- A. Yes.
- Q. Would you just tell us now what happened?
- A. Well, Mr. Bennett was on the corridor that evening. . . . Mr. Bennett brought

the requests around. I asked for my request. . . .

Q. You wanted a purchase order for cigarettes and that sort of thing?

A. Yes.

Q. All right.

A. Mr. Bennett had wrote down what I wanted and . . . I put an "X".

I signed it with an "X". . . . I don't know if he got in an argument. All I know, he started to laugh at me. . . . Okay. I says to Mr. Bennett, I says: "Come on now, it's not a smart thing to do is laugh at someone who can't read and write." He still had a grin on his face and I threw a cup at the grille gate.

Q. A cup?

A. A plastic cup . . . we had it in the corridors for getting our coffee. . . .

Q. So you really threw it at Mr. Bennett, is that right?

A. Yes, Mr. Bennett.

Q. When you threw the cup at Mr. Bennett or towards Mr. Bennett did it strike anything?

A. It striked the bars. . . . It broke.

Some pieces of the cup fell inside the corridor and some outside. Switzer denied that any pieces struck Bennett. Bennett left the range, and Switzer lay down beside Rick VanDusen and Marc Haman in the day room, the cells being locked.

Switzer stated that Bennett came back with another correctional officer, C.O. 1 Charles Leutz, and "asked me to get up and I said no".

Q. Where did you first see Mr. Bennett and this other guard when they returned to the range?

A. They came right over to me and asked me to get up.

Q. Where were they, inside the range or outside?

A. Inside the range.

Switzer said he refused to get up and continued watching television.

Q. What happened then?

A. And Mr. Bennett got me up and ——

Q. How did he get you up?

A. Got ahold of me.

Q. Grabbed you where?

A. Got ahold of my shirt.

Q. Grabbed you by the shirt. . . . Did you get up on your feet?

A. Yes, I did.

Q. All right. What was the other guard doing, if anything, at this time?

A. Well, Mr. Bennett had got me up and all I know is the other guard got ahold of me and held me.

Q. Just a moment, the other got ahold of you?

A. Yes.

Q. How did he get ahold of you?

A. My hands were like this, back here.

Q. You are indicating your hands were grabbed?

A. Yes.

Q. And placed behind your back?

A. Not behind my back, to the side.

Switzer said that all he could remember was that Bennett punched and kicked him and he went down. "I got kicked and blacked right out."

Switzer said that he was wearing pyjamas at the time and that they bore "boot marks on the side. . . . I hadn't noticed, but the next day [saw] all the boot marks on the leg of my pyjamas."

Q. Why did you say they were boot marks?

A. They were black. How else would they get there if they weren't boot marks? . . . Must have been shoe polish off the boots. . . .

Q. And when you came around you saw Richard VanDusen?

A. Right.

Q. What was he doing?

A. Well, he was helping me. I had a stick put in my mouth. . . . There was some blood coming out of the side of my mouth. Some of it was on the mat I was laying on. . . .

Q. And the male nurse, Pierre [Cabon], was there, is that right?

A. Yes. And he had gone into my cell and put my mattress — put my bed onto the board, and Richard and Marc [Haman] had helped me into my . . . cell and laid me out on the mattress. And then apparently I took a few more attacks, according to Richard and Pierre, and Pierre was going to let me — wanted me to go to the hospital. . . .

Q. Why didn't you go?

A. I wouldn't go unless Richard VanDusen went with me. . . . Because Richard is a very good friend of mine and I was of the state of the mind, and I don't like hospitals. I can't stand them. I wouldn't go unless I had somebody that I knew to go there with me. You know, at the time, I didn't know what was wrong with me, why I was bringing the blood up or what, you know. . . . Apparently Pierre had made arrangements for Richard VanDusen and Marc Haman to stay in my cell . . . until I got settled down. . . . I went to sleep and that's all I remember after that.

Q. All right. Now then, what was the next thing that happened, as far as you are concerned, medically after that?

A. Well, I was spitting up blood for quite a while there and hollering for sedatives, I went down to see Dr. Dickinson, and he sent me to St. Michael's Hospital.

Q. Well now, the records seem to indicate that it was May the 9th that you saw a doctor, and this incident that you related apparently occurred on Wednesday, the 7th of May; so Thursday would be the 8th and Friday would be the 9th, is that correct?

A. I guess so, yes.

Q. And it appears as if you saw the doctor on May the 9th, which would be Friday, and then on May the 10th you saw another doctor; and at about 1:00 p.m. on Saturday May the 10th you were taken to St. Michael's Hospital. . . . Mr. Commissioner, for your information, there appears to be an entry after the date of May the 9th that has initials, and I believe the initials



to be K.S., which I believe to be Dr. Stark. . . . The next entry appears to be the entry by Dr. Dickinson having purportedly seen Mr. Switzer. And the next day, May the 11th, there is another entry I believe made by Dr. Dickinson, as well as another further entry on the 12th.

Dr. Stark was a psychiatrist working part time in the Toronto Jail. Dr. Dickinson was one of the jail's general practitioners. I find no criticism in the medical attention Switzer received, having in mind the jail's facilities and Switzer's known medical history.

Q. When you saw the first doctor, did you complain to him about something?

A. Yes. I had pains in my side.

Q. And did you tell him what caused the pain, as far as you were concerned?

A. Yes. I told him I was kicked or punched in the side or something.

Q. Did you say by whom?

A. Yes, I told him who it was by. . . . By one of the guards. I didn't say his name. I didn't say Mr. Bennett's name. I just said it was one of the guards . . .

Q. Now then, when you saw Dr. Dickinson, where did you see him?

A. When I was down in surgery. . . .

Q. Now, then, after you saw Dr. Dickinson, did you go to . . . St. Michael's Hospital . . . and receive an examination?

A. Yes, I did. . . .

Q. How long did you suffer from internal bleeding, as far as you are concerned?

A. Just till the day I went to the hospital and after I came back the doctor put me on to some kind of medication and it stopped.

Mention was then made of an attendance at Humber Memorial Hospital in April 1973 or 1974 for a similar internal bleeding condition.

Switzer stated that when he returned from hospital he went back to 2A south and that he was never charged with misconduct for throwing the cup at Bennett, nor was he taken to segregation. No doubt with someone other than Switzer, for whom allowances were made and whose physical condition was known to the Toronto Jail authorities, charges would have been laid. This showed a commendable bending of the rules.

Switzer stated that two or three days later he spoke to C.O. 5 Vassos Zodiates and asked to see a justice of the peace.

Q. For what purpose?

A. About this charge.

Q. What charge?

A. That I laid against Mr. Bennett.

Q. What charge did you lay against Mr. Bennett?

A. Assault.

Q. Assault on whom?

A. On me.

This is a reminder of how justices of the peace might deal independently with such complaints.

With reference to Malouf's involvement, Switzer stated that he did not see Malouf take any part and this is consistent with Switzer's evidence that he "blacked right out".

After completion of Mr. Bynoe's examination, each counsel was permitted the right to further examine. To his own counsel, Mr. O'Sullivan, Switzer stated that he had not been involved in any previous altercations with Bennett. Reference was made to the purchase order.

MR. O'SULLIVAN. And do you recall whether or not Mr. Bennett said anything to you after you placed the "X" on the order?

A. Well, he just told me that I couldn't get my request unless I signed my name.

Q. What did you say to that?

A. I told him I couldn't, that is why I put the "X". I don't know if we got into an argument or what happened. I know he started to laugh at me, which I said to him it is nothing to laugh at a person who can't read or write, and he kept on laughing, and I threw the cup.

Switzer said that there was no water in the cup at the time. The questioning by O'Sullivan continued.

Q. Now, when Mr. Bennett returned, Mr. Switzer, you indicated that he pulled you to your feet. Do you recall whether or not you struggled with him at that time?

A. Yes, I remember I was putting a little struggle up, yes.

Q. What exactly was the nature of your struggle? What were you trying to do?

A. I was trying to get away from him.

Q. Okay. Do you recall or do you remember at any time striking him, Mr. Bennett?

A. No, I did not. . . . I did not hit Mr. Bennett.

Switzer indicated that he was grabbed by his shirt and raised to his feet and that all he tried to do was to push himself away from Bennett, to work his way free. "My hands came up close to his arms as I was pushing myself away. I got my hands onto his arms and pushed myself away."

THE COMMISSIONER. Were you able to push his arms away?

A. No, I was not.

Q. When you moved your hands towards his arms did you slap his arms at all or did you just put your hands on his arms and push?

A. I must have slapped or something, but I had to, I know that.

MR. EVANS. Yes. Well, when you, as you say, saw Mr. Bennett laughing at you, you were a bit upset about that, weren't you?

A. Yes, I was.

Q. You had no intention of co-operating with him, did you?

A. No, I did not.

Switzer stated that he was lifted by the band of his pyjama bottoms. He was not wearing a top at the time. He averred, "I tried to force my way away

and . . . I couldn't force my way away. And then they got me up onto my feet and that's when I was kicked in my side or punched. I don't know anything after that."

Q. And you saw him reach down and pick you up?

A. Yes, I did.

Q. Yes. And at that time, is it possible that your arms were ——

A. They could have been, yes.

Q. —— outstretched to resist him?

A. I won't deny it. I don't know. Maybe I did and maybe I didn't. I don't know. . . . I will admit I was pretty hyper and pretty mad at that time. . . . And when I get that way, sometimes I don't know what the hell I am doing.

Q. I see. So many things could have happened that you wouldn't remember because you were so upset, is that what you are saying?

A. Yes. . . .

Switzer said that about three or four weeks after this incident he was placed in the hospital dormitory. "About three or four weeks after that I used to, you know, get very upset, and Mr. Wilson had made arrangements for me to be out in the corridor working with Mr. VanDusen because Richard and Leonard Gray are the only ones that can keep me cool in the jail. . . . They are the only ones that stop me from punching this one out and that one out, I will put it that way."

Q. So other than the two people you mention, very few people exercise any control over you. Is that what you are saying?

A. Yes. . . . The only time I lose control is if somebody is giving me a hard time. . . . Hollering and yelling at me. No one is going to holler and yell at me without me hollering and yelling back because I'm not that type of — you know I am not that type of person. . . . So if someone is halfway fair with me and talks reasonable to me, I will talk the same way with them. . . . If they want to be snobby and sarcastic about it, well, I can be the same, too. . . .

Q. And if someone hauls you up by your pyjama bottoms, you will resist that?

A. You're damn right I will. Why shouldn't I?

The above excerpts are included to indicate the problem Switzer had and the problems that correctional officers would have if he was not handled in a tactful manner.

Switzer was then examined by Bennett's counsel.

MR. CLYNE. So I am putting it to you that when you asked Mr. Bennett for a purchase order he told you that he was already finished taking the purchase orders — that you had to wait. . . .

A. Apparently Mr. Bennett did say that, but at the time he took the request I was sleeping, and I went up and asked him, and that is when he told me to wait. . . .

Q. I am further putting it to you that when he told you to wait you became very abusive, and you threatened to knock his head in with the cup?

A. I didn't threaten to knock his head in with a cup. . . . He began to stand there and laugh and that is when I threw the cup at him. . . . I didn't get annoyed when he told me I had to wait. The reason I threw the cup is he stood there and laughed at me. That was enough to get anybody annoyed, you know what I mean?

To Mr. Clyne, Switzer again stated why he threw the cup. "The reason I threw the cup at him is he stood there and laughed at me. It is not my [deleted] fault that I can't read or write and it is not right for a guard or any kind of a person to deliberately stand and laugh at a person who cannot read and write and that is why I threw the cup at him."

Having few liberties and nothing to balance the authority that correctional officers have over them, inmates guard their self-respect jealously and resent strongly any impingement upon it. Bennett's laughter was bound to anger a hypertense person such as Switzer because it was a reflection on his lack of education. Correctional officers should be taught the necessity for a proper attitude in such situations.

In the light of all the evidence, I do not think that Leutz did more than try to hold and restrain Switzer. He may have also been trying to assist in escorting Switzer out of the range, and for this reason, too, was holding on to his arms.

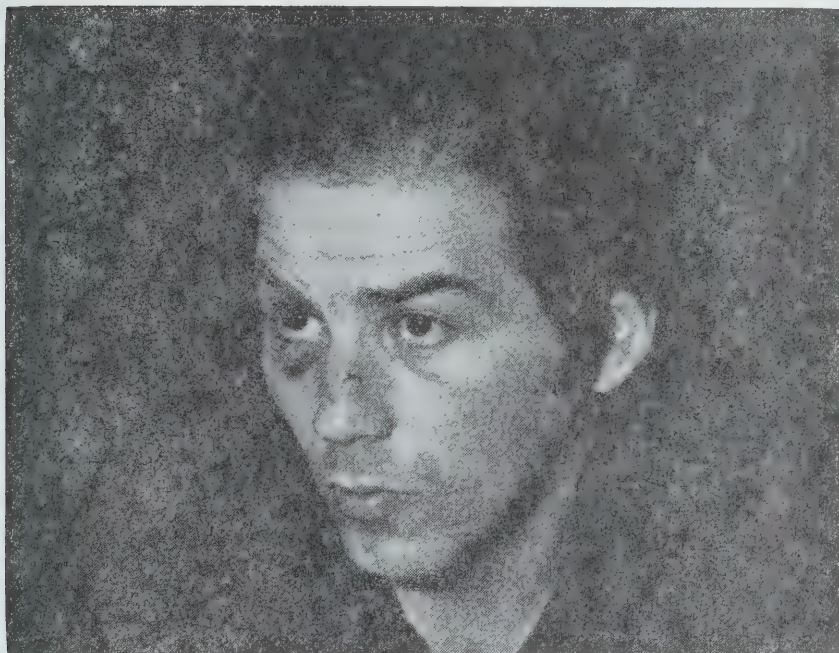
Mr. Clyne inquired whether Switzer might have kicked out with his legs when he was putting up his struggle of resistance, to which he replied, "Like I said before, I could have. I don't remember. I will admit to you: I knew I was putting a struggle up with Mr. Bennett. I don't know if I was moving my hands or I was pushing him, but I will admit I was trying to get away from him - to get it down to a fine point."

## EVIDENCE OF STANLEY MICHAEL MALOUF

Another principal witness in the Bennett matter was Stanley Michael Malouf. He was 28 years of age. He was born in the Rouyn-Noranda area and reached Grade XI in school. He had a criminal record dating back to 1964 and it was in connection with a criminal charge that he was lodged in Corridor 2A south.

He stated that he was sitting on the floor when he heard some yelling and Switzer said something like, "Don't laugh at me." He said that there was also some mention by Switzer about throwing a cup. Both these statements were, therefore, confirmatory of the evidence of Switzer. Malouf said the remarks were directed to Bennett. He said that the cup was thrown against the bars and it smashed. He was unable to say where the pieces landed. After that, Switzer was ordered out of the corridor and he refused to leave. Subsequently, Malouf said, Bennett disappeared and then returned with Leutz and C.O. 2 Thomas Davey.





*Stanley Malouf*

Davey remained in the sallyport area, that is, outside the corridor, and Bennett and Leutz entered the corridor and came over to where Switzer was sitting on the floor.

Malouf stated that Bennett and Leutz grabbed Switzer's arms and tried to pull him to his feet. Up to this point there was nothing that could be criticized in the conduct of Bennett. To the contrary, I believe he was acting according to proper procedure and he was justified in trying to remove Switzer from the corridor and to get him onto his feet for this purpose. It was what followed next that was the critical event and also the matter in which Bennett failed to act as a correctional officer should have acted.

If there was difficulty getting Switzer to stand up and leave the corridor, additional correctional officers should have been called upon. There is also some question whether a person in Switzer's physical and mental condition should have been taken to segregation or isolated in another part of the jail. There is now a psychiatric facility on the fourth floor, but it may be that at the time this occurred he could have been isolated in 1A hospital or some other area where he could have been observed and if necessary attended to medically.

Malouf's recounting of events was as follows:

- A. They tried to pull him to his feet but he did not want to, he was dragging his feet. The result was that he was on the floor with Mr. Leutz pulling him one way and Mr. Bennett pulling him the other way. Then Mr. Bennett started



kicking him.

MR. BYNOE. Started kicking who?

A. Switzer. . . . They were very hard kicks. . . . He was kicking him repeatedly. I could only guess at how many times, I would say he kicked him five times by the time I told him to stop.

Q. Now you indicated that there were five kicks. What did you do?

A. I yelled out for him to stop.

Q. Why?

A. Well, because I did not feel that it was right.

Q. What, if anything, had Mr. Switzer done, other than what you have told us about dragging his feet?

A. Nothing.

Q. Is that all?

A. Nothing to warrant treatment like that.

Q. What was the other guard doing, if anything, when Mr. Bennett was kicking Mr. Switzer?

A. He had Switzer's left arm.

Q. Did he do anything more than hold or restrain Mr. Switzer?

A. No.

Q. Now then, you have indicated that you said something to Mr. Bennett. Can you recall what you said?

A. I believe I said stop.

Q. Just stop?

A. It is hard to recall exactly what I said but I believe that is what I was trying to convey.

Q. Did Mr. Bennett stop?

A. No.

Q. What if anything did you do or say thereafter?

A. I jumped up and held his arm.

Q. How far did you have to move?

A. Seven feet, maybe 10 feet.

Q. You held whose arm?

A. Mr. Bennett's.

Although one cannot justify Malouf's reaction in law or according to jail regulations, one can readily understand his reaction upon seeing the kicks administered by Bennett to a person in Switzer's physical and mental condition.

These kicks have been confirmed in evidence by a large number of witnesses, not only inmates but also the fellow correctional officers of Bennett, Leutz and Davey. There is considerable difference of opinion as to the number of kicks that were administered and this is understandable in the excitement of the event, the vantage place of the various witnesses, and their interest and even prejudices, but one thing that is shared by all witnesses is that Bennett did kick Switzer. The only one who does not agree with this is Bennett, whose evidence was that he raised his leg in self-defence and that he did not kick Switzer purposely.

The estimates of the number of kicks varied. Among the persons who gave evidence as to the kicks were the following:

VANDUSEN.	"One kick – possibly more"
FIEGEHEN.	"Two or three kicks"
SCHMIDT.	"Two kicks"
SPENCER.	"One kick"
HAMAN.	"One kick, possibly more"
KOBELNAK.	"Several kicks, at least five"
MCCULLOUGH.	"Three or four kicks"
MALOUF.	"Five kicks"
FOSTER.	"Two or three kicks"
BERNARD.	"Several kicks, at least three or four"
LEUTZ.	"One kick"
DAVEY.	"Ten kicks"

Of course, all witnesses did not see the event from the beginning. Insofar as Davey was concerned, there might well have been some prejudice against Bennett by Davey, related to Bennett's colour, and in view of the other evidence I am inclined to think that Davey's estimate of 10 kicks is inaccurate.

Malouf was again asked what he said while he held on to Bennett's arm, and he replied, "Something like stop or stop that and settle down, something to that effect."

Malouf was asked what had occurred next and he said Bennett "back-handed" him in the face. He was unable to say whether this was a blow specifically aimed at his face or an attempt to obtain the release of his (Bennett's) arm. Malouf then said that the next thing that occurred was that he struck Bennett in the face with his fist, following which "we engaged in a close-up struggle . . . we were fighting each other but we got into a kind of a clinch the way boxers do [who] don't box too well. We were holding ourselves up close and Mr. Leutz was getting us to stop, yelling at us to stop."

Malouf indicated that he struck Bennett six times in the face.

Q. What effect if any did this seem to have on Mr. Bennett?

A. It's hard to say what effect they had; they did not knock him down, it did not seem to be too serious.

Q. Was he cut in any fashion that you observed?

A. No.

Q. How many times did Mr. Bennett strike you after you say you were struck with his backhand?

A. It is really hard to number the blows, none of the blows were very serious. We were both fighting each other, we were both striking each other.

Q. Is it fair to say that you both struck about the same number of blows?

A. Yes.

Q. Where did Mr. Bennett's blows land on you?

A. Mostly in the body area.

Q. Were you struck in the face?

A. No, I don't think so, not that I – just the first blow and I don't think I had any more in the face at that time.

Again, the actions of Malouf were most improper. Not only may they have caused Bennett to lose face in front of correctional officers and inmates, but they probably also made him angrier than he was when he kicked Switzer. This may have accounted for the additional events that occurred after Malouf and Bennett left the range. It is also of some interest to note that Malouf stated that, other than the first blow that he received to the face, the rest of the blows he received from Bennett were to his body. This is important in connection with weighing the evidence as to what may have happened to Malouf after he left the corridor and in view of photographs that were filed indicating injury to Malouf's nose and eye and the other evidence given that at the time Malouf left the corridor there were no marks on his face. It would then be reasonable to assume that the cut on his nose and the injury to his eye were caused by subsequent blows after he left the corridor with Bennett.

While they were fighting in the corridor, Leutz attempted to get them to stop. "Well, I said that I would stop if Mr. Bennett would stop. And Mr. Leutz kept on saying come on stop, stop."

To Leutz's credit he did not join in the fight but rather attempted to stop it. Leutz was of such a size that he could have joined in the fight if he had been so disposed. It may be that other officers who had been challenged would have reacted differently. This is another example of Leutz's favourable conduct as a correctional officer.

After a time, Bennett and Malouf stopped fighting, probably as a result of Leutz's urging. Bennett then took hold of Malouf's arm. Malouf told him to let go, that the matter was over. He was ordered to leave the corridor and agreed to go.

Malouf stated that "just as I was going out I could see Switzer having a seizure".

After leaving the corridor, Malouf went through the sallyport and then started walking towards the landing. He was of the opinion that he was going to the "hole".

Q. How far along did you walk before anything of significance happened?

A. It was not very far, two or three steps.

Q. What happened?

A. I got punched in the back.

Q. What was the degree of force of the blow?

A. A very, very strong punch in the back by Mr. Bennett.

Q. Do you recall where the blow landed?

A. Right in the centre of my shoulder blades. . . .

THE COMMISSIONER. If the punch was in the back, how did you know it was Mr. Bennett?

A. As soon as I turned around I engaged in another struggle with Mr. Bennett. . . .

MR. BYNOE. In what fashion?

A. He was trying to hit me and I was trying to protect myself and hit him back.

Q. What with?

A. Our hands, and he was kneeling me and I was kneeling him.

Q. Did any of these knees, as you call them, land?

A. No, sir, not so they made any damage.

Q. What if anything had you done from the time that you left the sallyport until the time that you were struck by Mr. Bennett in the back, as you have described, towards Mr. Bennett?

A. Nothing. . . .

Q. What if anything did Mr. Davey do?

A. Nothing.

Q. What did you do or say?

A. I called on Mr. Davey to stop it.

Q. All right. What was the next thing that happened as far as you were concerned?

A. Mr. Bennett and I continued fighting. And Mr. Leutz came up and grabbed my arm.

Malouf said that Leutz put his (Malouf's) left arm behind his back. "He was again trying to stop the fight." While Leutz was holding Malouf, "Mr. Bennett started punching me in the face."

Q. What with?

A. His fist.

Q. How many times were you struck?

A. Three to five times.

Q. Did the blows land?

A. Yes.

Q. Where?

A. To my face, my face and here.

Q. You are indicating your face and you are indicating your right eye and you are indicating the area of your left eyebrow, is that correct?

A. Yes.

Q. What condition, if any, did you observe Mr. Bennett to be in at that time?

A. He seemed very intent on what he was doing. He seemed to know what he was doing. I would guess that he lost his head.

Q. Did he say anything?

A. No, there was no conversation at all. I kept on calling to Mr. Davey to stop it and it was at that time that a group of other guards came in. . . .

Q. What do you say about the degree of force of the blows that you say you received from Mr. Bennett?

A. I would say they were all his might.

Q. What effect if any did they appear to have on you, sir?

A. My nose exploded in blood.

Q. Were you cut?

A. Yes.

Q. Where?

- A. In the nose here.
- Q. You are indicating the left bridge of the nose.
- A. My eye was just puffed right up.
- Q. You are indicating your right eye?
- A. And as soon as the guards came, Mr. Bennett grabbed me by the throat. I was marked pretty well on my throat here.
- Q. What did he grab you with?
- A. His hand.
- Q. He grabbed you by the throat and in what fashion did he grab you?
- A. A hard fashion.
- Q. You are indicating he grabbed you with his hand, four fingers and thumb in some fashion?
- A. Yes.
- Q. What fashion was it?
- A. The fashion that I could not get release from him and the fingernails scraped my neck. . . .
- Q. Did you have any difficulty in breathing?
- A. Yes, I had quite a bit of difficulty in breathing. He scared me.
- Q. Were you saying anything at this time?
- A. I was screaming to let go my neck and let go my arms, that I was all right and did not need to be held.

Malouf said that he was then picked up by other correctional officers and put in 2B segregation.

No doubt the other correctional officers who arrived saw a volatile situation – an inmate struggling with a correctional officer – and they quite properly took him to segregation where he could be isolated. There is no evidence that Malouf was injured while being taken to segregation. Rather, the evidence indicated that the injuries he sustained were a result of Bennett's attack on him.

Malouf stated that one of the female nurses came later and cleaned his face. He did not tell her anything about what had happened to him. "I did not want to have any more trouble so I figured if I was going to say anything to anybody it would be to Superintendent Taylor and until I saw him I was not going to say anything."

Malouf said that a senior correctional officer whom he identified as C.O. 5 John Moquin came after the nurse. Both of them were there within the first hour. Malouf indicated that Moquin opened with a statement that he was "a maniac to attack a guard". Malouf said that he asked to have Bennett present.

- Q. Did you ask Mr. Moquin to see Mr. Bennett so that you could apologize to him?
- A. I don't know if I used "apologize" – "to straighten out", I think.
- Q. You say "straighten out". You wanted it straightened out?
- A. That is what I wanted to do. I just felt pretty bad about the whole thing. I had to go to court the next day for my trial.



Asked about the injuries as they appeared the next morning, Malouf said, "My right eye was completely closed . . . and I had a cut on my nose. . . . I had a scrape on my neck and abrasions on my arms and body but no serious abrasions. . . . I had a bruise on my arm."

Malouf was in segregation for a total of six days. He was asked whether he had made any requests while he was in segregation and he replied: "They never brought any request forms to segregation."

Inmates in segregation should not be deprived of the right to put in request forms. This may be even more important when they are in segregation, to ensure that their families or lawyers may know that they are in segregation.

It is commendable that the Superintendent visits the segregation area every morning. Despite this fact, apparently Malouf did not see Mr. Taylor. He did say, however, that he saw a deputy of the Superintendent. He may have missed Mr. Taylor because he was going back and forth to court. His trial was postponed, he said, because of the appearance of his face.

Malouf said that it was after he was photographed on May 15 by a photographer from the Metropolitan Toronto Police Department that he made a request to see a justice of the peace.

THE COMMISSIONER. Do I understand from that, that you saw a Justice of the Peace on the day following the photographs being taken?

A. Yes. I thought when the officers came and took these pictures, they were coming to investigate as a result of something my lawyer had said or some member of my family had said, that had seen me in court.

Q. Who suggested that you should request to see a justice of the peace?

A. I did not realize that there was any way to see the justice of the peace within the jail; that was why I wanted to see Mr. Taylor. After talking to my lawyer, that was when I became aware that you have to go through the Superintendent to get whatever you want, so I would go back to the jail and get to see him and get a justice of the peace.

Q. Was it your lawyer who suggested you should see a justice of the peace?

A. Yes. I asked him if he would handle it, it seemed to be something that could be handled internally.

The Malouf incident indicated the need for inmates (and correctional officers) to know of the right of recourse to a justice of the peace and it provided another example of a justice of the peace acting as an independent person in the jail.

Malouf's medical records were reviewed with him.

Q. Did you have any complaints?

A. Well, I wanted to have an X-ray to have my nose straightened out.

Q. What happened to your nose?

A. It was crooked and I wanted to get it set.

Q. Was it crooked before you were involved in this incident with Mr. Bennett?

A. No sir. . . .

Q. There is an entry . . . for May the 16th under the hand of Dr. Dickinson as follows: "Wants X-ray his nose (I see no indication for this)." Did you tell

the doctor you wanted to have your nose X-rayed?

A. Yes I did, and I think I may have asked for sleeping medication.

There was no indication that Malouf's nose was X-rayed while he was at the Toronto Jail. In future it would probably be better to err on the side of caution and where there was evidence, at least some external evidence, of nose injury, and a request was made for an X-ray, the X-ray should be made. In this case a correctional officer was involved and it would have been advisable to have it taken at an outside hospital.

It was also brought out that while Malouf was in segregation he had put in for a request form but was told it was too late, that the forms had already been called for earlier in the day. Correctional officers are kept busy during the day to the extent that there has to be some cut-off point in connection with request forms. Nevertheless some latitude should be given, particularly where a person has just been brought into segregation.

The correctional officer was identified as C.O. 2 Alexander Davidson.

A. You see, I called for a request and he was handling someone else a couple of cells down. . . . He did not come to me. A little while after that I called to him again. I did not want to keep interrupting him when he was giving the other person a request. He said something to the effect, why did you not call when I was there or something like that. I said I did and he said, no, you did not. I said I would not lie to you. I did not get my request.

Q. And so far as Mr. Davidson was concerned, he had already advised you you did not get your request because he did not hear you and it was too late as far as he was concerned when he did speak to you about it, is that correct?

A. Yes.

Malouf estimated the interval at about 10 minutes.

Although in his evidence Malouf stated that his reason for wanting the request form was to see the Superintendent, he did not follow this up with anything other than a request form. At no time did he indicate to any of the staff that he wanted to be paraded to the Superintendent.

This, too, should be covered in information given to inmates, that they have the right to be paraded to the Superintendent if they require some communication beyond that which they can have with the line officers or the senior officers. They should, of course, be encouraged to communicate with the line officer wherever possible, and failing that with the senior officer, and only on matters of some import with the Superintendent.

The complaint Malouf had was of sufficient significance to entitle him to be paraded to the Superintendent, but he did not make this clear to the correctional staff and only asked for a request form. So the matter may have been treated more lightly by the correctional staff than it would have been if he had demanded to be paraded to the Superintendent.

When Malouf was questioned by Mr. O'Sullivan, on behalf of Switzer, the matter of the kicking by Bennett was again discussed.

MR. O'SULLIVAN. Did Mr. Switzer at any time you saw get entirely to his feet?

A. No, sir. He was pulled up but he was being held up. . . .

Q. So while he was not lying on the ground he really was not being supported by his own force. He was obviously being supported by the guards?

A. That is right. He did not want to move.

THE COMMISSIONER. Were the kicks that you allege were administered by Mr. Bennett, for the purpose of getting Mr. Switzer to move or were they a result of Mr. Bennett's anger that the cup had been thrown at him, do you know?

A. I think the idea was to show the rest of the inmates that orders were not going to be refused – disrespect.

Q. It was not a matter of sort of prodding him to move him along, then?

A. It was not a prod. They were vicious kicks, as hard as he could kick. . . .

MR. O'SULLIVAN. One further question, Mr. Malouf. With respect to Mr. Switzer, did the guards tend to give him a fairly wide berth or did they seem to treat him in any out-of-the-normal manner?

A. The majority of the guards were aware about Switzer's condition. I thought he got treated very well.

When examined by his own counsel, Mr. Bukovac, Malouf related an incident a couple of months prior to the Switzer incident, also involving Bennett.

A. There was an inmate in there that needed some medication, there was something wrong with him. He had been complaining about it. They had just locked him up and we could just hear noise in the cell, he was pretty sick. He kept asking for medication and Bennett just laughed at him. I do not think he believed him. As a result, we had to make a noise for about an hour and a half, rattling in the cells and burning our clothes and yelling and screaming and after a time they came and took the guy away.

The inmate involved was Timothy Kevin Casados.

In evidence Malouf indicated that he had not been involved in any other incident with correctional officers at the Toronto Jail.

In his answers to questions put by Mr. Carter on behalf of the correctional officers other than Bennett, Malouf did not attach any wrongdoing to Leutz. The answers given by Malouf indicated that Leutz acted promptly and properly at all times.

MR. CARTER. Mr. Malouf, I take it the first contact that you had with Mr. Leutz, was when he came to Mr. Bennett's assistance after you had grabbed Mr. Bennett. Is that correct?

A. That's right. He just wanted us to break it up. . . .

Q. All right. And then after you got out, Mr. Bennett came behind you and the altercation began again?

A. That's right. . . .

Q. And his [Leutz's] role on these two occasions was that of a peacemaker, as it were?

A. That's correct.

Q. He at no time struck you or did anything other than trying to break up

the fight?

A. That's right.

In cross-examination by Mr. Clyne, Malouf stated that when Bennett and Leutz entered the corridor Switzer was still angry at Bennett and he was "mumbling to himself". The gist of his mumbling was an uncomplimentary remark about Bennett's size and colour and also "something about . . . [laughing] at me because I can't read or write".

Malouf agreed that Switzer was very annoyed at Bennett but he said that Bennett would not be able to hear what Switzer was saying. Mr. Clyne questioned Malouf as to whether or not Switzer kicked the correctional officers.

MR. CLYNE. He was kicking his feet?

A. He was thrashing his feet around; that's right.

Q. He could have kicked any one of the officers?

A. I didn't see . . . any blows exchanged by Switzer.

As for the incident in the corridor, Mr. Clyne asked:

Q. And you punched him several times?

A. That's right.

Q. And you got the better of him at that time?

A. That's correct.

Q. Bennett did not get in any [further] punches to your face?

A. I think he was shocked that I would hit him.

Malouf stated that after the initial punch to his face he did not feel any punches landing on his face, nor did he "feel them anywhere else either".

As for the episode after they left the corridor, Malouf stated, "When you get nailed with all somebody's might in your back, you either run or turn around and face him, because it is going to happen again. It just doesn't happen once."

Q. You will agree with me it is an assumption that you are making?

A. I think a pretty fair assumption.

Q. So you swung around and saw Bennett and then the fight was started all over again?

A. That's right.

Q. I am putting it to you that Bennett did not hit you in your back at all, that upon your emerging from the corridor you turned around and swung at Bennett like a lion springing at its prey; is that not the case?

A. I'm afraid not, sir.

Q. You are afraid not?

A. It wasn't like that, no. I think I was the prey; Mr. Bennett was the lion.

Q. Mr. Bennett was the prey on the previous occasion in the corridor?

A. No, Switzer was the prey in the corridor.

Q. You got the better of Bennett in the corridor previous to that occasion?

A. Somebody's got to win.



The impression was left, as a result of the questioning by Mr. Clyne and Malouf's answers, that after Malouf and Bennett left the corridor Bennett was still annoyed at what had occurred in the corridor when Malouf had attacked him.

Malouf once again denied that he had offered to apologize to Bennett and he said that he had told the senior officer, "Get him up here and we will straighten this out now," and he indicated that the senior officer, who was Moquin, may have taken it that he intended to apologize to Bennett but he specifically denied ever having offered to do so.

Malouf said that prior to laying the charge against Bennett through the justice of the peace, he had discussed the matter with others, namely his lawyer, the police officer who took the photographs, and also his own brother.

Q. Now, you made a statement when you were examined by my friend, Mr. O'Sullivan, that you believed the kicks that were administered to Switzer by Bennett were meant to show other inmates that orders should not be disobeyed. Now that is purely your opinion, isn't it?

A. That is what I was asked for, yes.

Q. And it is purely your opinion?

A. Yes.

Q. But you don't know as a fact that that was the intent or purpose of the alleged kicks?

A. Maybe he just intended to hurt him, I don't know.

Q. But you don't know as a fact, sir, to repeat my question, that it was meant to be a lesson to other inmates?

A. No.

Malouf was re-examined by Mr. Bynoe, with reference to an altercation he alleged he had on an earlier occasion with some inmates. This testimony was relevant to the question of the treatment inmates receive at the hands of other inmates when they are charged with sexual offences, the need for the jail to give them protection, and the duties that are cast upon correctional officers in this regard.

During the course of his evidence, Malouf had an interesting and succinct observation to make about society, jail, and segregation: "It's an awful feeling when you get thrown out of society and into jail, and then when you get into jail, which is the skid row, and nobody talks to you. I figured that if that was the way it was going to be I would rather go into the hole and talk to myself."

## EVIDENCE OF CHARLES ROLAND LEUTZ

C.O. 1 Leutz was 24, was born in North Carolina, and was a citizen of the United States. He was married and had a Grade XII education. After com-



pleting high school in the United States he joined the U.S. Marine Corps and served for four years, including one and a half years in Vietnam. He received a number of decorations including the Combat in Action Medal, the Vietnam Cross of Gallantry, a Good Conduct Medal, and the National Defence Service Medal.

Leutz gave his height as 6'3" and his weight as 185 pounds. He indicated that his wife was from Toronto and that they had made a joint decision to live in Toronto. He had applied for admission to the police force but had not been accepted as he was still a U.S. citizen.

He came to Canada in August 1974 and commenced his employment with the Ministry of Correctional Services in September 1974, at the Toronto Jail.

At the time of giving evidence he had just completed the three-week course at Guelph.

On May 7, 1975, Leutz was on duty with C.O. 2 Thomas Davey at the 2B landing. He stated that Bennett came out to the landing asking "for a cover so that he could get inmate Switzer out of the corridor".

Leutz stated that Bennett had told him that Switzer had thrown a cup.

A. Mr. Bennett led the way; I followed him and Mr. Davey also came . . . Mr. Bennett and I proceeded into the corridor itself.

MR. BYNOE. Where was Mr. Davey?

A. He was in a covering position. . . Mr. Bennett told Switzer to get up and Switzer said something to the effect, "I'm not going to the hole. . ."

Q. Now, having said what he said, what, if anything, did you do or did Mr. Bennett do in relation to Mr. Switzer?

A. We proceeded to grab him. Bennett took Switzer's left arm and I went to grab his right arm . . . under the arm. . . Well, he's pretty small, sir. I guess about five-four or five-six, something like that. . . Well, Switzer started to resist and started to thrash about kicking, and he broke the hold.

Q. When you say he was thrashing about kicking, did any of those kicks land?

A. I saw several hit Mr. Bennett, and one or two hit me.

Q. Now what type of kick was this? Was this an aimed, deliberate type of kick or some other type of kick?

A. In my opinion, I don't think he was aiming the kicks, he was just thrashing about to prevent us from getting a good hold on him.

Q. All right. Now then, did you and Mr. Bennett appear to be able to hold on to Mr. Switzer?

A. No, sir, we were among some other inmates and it was hard to get a hold on him, so he broke the hold and was thrashing about and came to rest near the bars, as I mentioned, a little in front of the T.V. . . .

Q. Now Mr. Switzer seemed to break your hold, and he was lying on the floor in the area you described. Now what did you do and what did Mr. Bennett do then?

A. I started to reach down to resume a hold and Mr. Bennett came from behind and kicked Switzer in the stomach with his foot.

Q. What, if anything, can you tell us about the kick? Did it appear to be a deliberate kick?

A. I would say so, sir.

Q. Did it appear to land on the inmate?

A. Yes, sir.

Q. Whereabouts?

A. Right about the stomach area, sir. . . .

Q. Was there more than one kick?

A. That was the only kick I saw, sir.

Q. Having seen that kick, what, if anything, did you do or observe with respect to Switzer?

A. Well, at about the same time Malouf jumped at Mr. Bennett and struck him in the face, so my attention was turned from Switzer.

Q. All right. Did you see what effects, if any, the kick appeared to have on Mr. Switzer?

A. Not at that instant sir. When I had a chance to look back again he was in convulsions. . . .

Q. Did Malouf say anything before he struck Mr. Bennett?

A. I believe he said something to the effect; "Leave him alone, he's a cripple," or something to that effect.

Q. Now then, Mr. Bennett was struck by Mr. Malouf and where did the blow land?

A. In the face, sir.

Q. What happened after that?

A. They both started swinging and I went to grab Malouf and put him in an armlock. And about that time Malouf says, "All right, I'll go, I'll go." So both Bennett and I released our holds. Then Mr. Bennett and Malouf proceeded to walk out of the corridor.

Leutz said that Bennett and Malouf left the corridor and he (Leutz) then turned back towards Switzer to see what was happening with him and at that time Davey called him out into the passageway leading to the landing. When he came out of the corridor, he saw that Malouf and Bennett were again fighting and blows were landing. He stated that he then "grabbed Malouf from behind and put him in an armlock".

Q. Now, you had Malouf in an armlock, and by that do you mean again one arm behind his back?

A. I had his right arm up. . . . Mr. Bennett also had ahold of . . . him by the neck. . . .

Q. A type of choke-hold; is that right?

A. Yes.

Q. The type of hold that you are indicating Mr. Bennett had on Mr. Malouf, would it be consistent with leaving a mark on the neck similar to the mark shown on the neck of the person in the photograph, Exhibit 503A?

A. I imagine it could, sir, if it was tight enough, but I don't know the degree of force that was used. . . .

Q. Now then, when you were holding Mr. Malouf, did you see Mr. Bennett punch Mr. Malouf?

A. After I secured the hold, no, sir, but while I was trying to get him into the hold there could have been a few punches thrown by both parties.

After that, C.O. 3 J. B. Brown, C.O. 1 Edward Torrance, and C.O. 5 John Moquin arrived and proceeded to take Malouf to segregation. Leutz indicated that there was some resistance by Malouf, but just before he went into segregation he was walking on his own.

Q. Now did you form any opinion with respect to the force that was used by Mr. Bennett with respect to the kick that you have described delivered by Mr. Bennett to inmate Switzer in 2A south corridor?

A. Yes, sir. I thought it was unnecessary. The hold had been broken and it was merely a matter of just picking him up again and carrying him out.

Leutz indicated that he felt no animosity towards Bennett and that prior to May 7 they were on friendly terms.

Leutz was questioned as to the proper procedure in connection with bringing an inmate out of a corridor.

MR. O'SULLIVAN. Is it the usual practice when someone like Mr. Bennett is involved in an incident where an inmate throws a cup at him, that he should be one of the officers who takes the inmate out of the corridor either to put him on charge or put him in segregation?

A. The usual procedure is to get the supervisor here and let him make the decision.

Q. So this particular incident was something a little bit out of the ordinary in the way it was handled at the start?

A. It depends on the situation. If an inmate swears at you and you feel you can walk in and bring him out without any hassle, it is really up to your discretion, but if you feel there is going to be a problem then you should call the white shirt to come up.

Q. Is the usual practice to call the white shirt?

A. Again it depends on the situation, sir. It is up to the officer on the corridor.

The above may well be the explanation of the start of the Switzer incident and an object lesson on how a matter such as this should be dealt with in the future. Certainly, it was a case of a series of wrongs on both sides. Bennett was wrong in mocking Switzer but this did not justify Switzer in throwing a cup at Bennett. The explanation, but not the justification, was Switzer's hyperactivity. Bennett, being the corridor officer, should have known of Switzer's epileptic tendencies and the fact that he was not normal either physically or intellectually and he should have called for a senior officer as soon as the cup was thrown. The decision concerning segregation should have been made by a senior officer. Switzer could have been removed from the corridor and placed somewhere other than in segregation; or he could have been given limited segregation. If a senior officer had come and ordered him out of the corridor, Switzer might have complied.

It was Bennett's duty to "keep his cool" and call upon a more senior officer.

Once in the corridor, Bennett again allowed the situation to get the better of him. If Switzer was resisting attempts to take him out of the corridor, and if he was lashing out with his feet, and if in so doing had kicked Bennett,

this did not justify Bennett's kicking of Switzer the way he did.

If Bennett did not know that Switzer was an epileptic and of less than normal physical and intellectual ability, then there was a lack of communication in passing on this information, and steps should be taken by the senior officers to ensure that information such as this is communicated. This is a matter both of training of senior staff and line officers and of jail procedure.

It may also have been a reflection on the recruiting methods of the Toronto Jail, which failed to detect the propensity of Bennett to react strongly in a situation such as this.

MR. O'SULLIVAN. Is it fair to say that you were satisfied in your own mind that the two of you, as big as you were, were not going to have too much difficulty getting him out of there?

A. Right, sir.

Q. You testified in your opinion the kick was intentional and landed in the stomach area. What degree of force accompanied the kick? Was it a hard kick, in your opinion?

A. Yes, sir. . . .

Q. One final question, Mr. Leutz. You have been in Vietnam and have seen a good deal there and have been a correctional officer at the Toronto Jail for 10 months now. What was your personal reaction to the kick?

A. I thought it was unnecessary. And endangered everyone's life that was in there.

Q. Would you describe it as brutal?

A. I guess so, sir, yes, sir.

In answer to Mr. Bukovac, Malouf's counsel, Leutz said that the reaction of Malouf to the kick administered by Bennett to Switzer was "almost simultaneous".

Again, Leutz said that he only saw one kick by Bennett and then Malouf said something to the effect that Bennett should leave Switzer alone and punched Bennett in the face. Leutz's evidence was also to the effect that had there been more than one kick he would have been in a position to see it.

MR. BUKOVAC. Why would Mr. Bennett grab Mr. Malouf by the throat in a choke-hold as you have stated when you had Mr. Malouf secured?

A. I don't know that, sir.

Q. Did you at any time hear Mr. Malouf yell to Mr. Davey . . . to come and help him because he was being choked?

A. I don't recall, sir.

Q. But he could have?

A. He could have, yes. . . .

Q. In your opinion was that choke-hold by Mr. Bennett necessary?

A. No, sir.

Q. Now . . . we have also heard some testimony that there was a lot of noise and screaming going on. Is that correct?

A. Yes, sir, the other inmates were yelling.

Q. Was Mr. Malouf yelling as a result of the choke-hold?

A. He said: "Let me go," or, "Let go of my throat," or something to that



effect, sir.

Q. Did you have an opportunity to view Mr. Malouf's face?

A. No, sir, not until we got to the segregation area.

Q. Could you describe what Mr. Malouf looked like at that time?

A. When I saw him?

Q. Yes.

A. Quite a bit of bleeding. It was pretty much all over his clothes.

On examination by Mr. Clyne, Leutz stated that he did not hear Switzer use any profane language but admitted that he was a "defiant person at that time".

MR. CLYNE. And how many times did he kick you?

A. Oh, one or two kicks I believe, sir.

Q. Where did they land?

A. Just about the feet or legs.

Q. How many times did he kick Bennett?

A. Several times, sir, a few more than me. . . .

Q. Did they land around Bennett's mid-section?

A. Pretty much, sir. His legs and ———

Q. Around his genital organs?

A. It could have, sir.

Q. Could have, right. Those kicks were pretty hard, weren't they?

A. It's hard to determine how hard a kick is, sir. He didn't kick me that hard.

It was during the cross-examination of Leutz by Mr. Clyne that Leutz added that he was not in a position to see whether more than one kick was made by Bennett against Switzer. This was at variance with what he had said earlier. It may be that he had reconsidered this aspect of the evidence, or that he misunderstood the question. In any case, I was satisfied that Leutz was attempting to give his evidence in an honest and forthright manner.

Of importance in connection with the possibility that Bennett reacted spontaneously to the kick or kicks of Switzer, Leutz stated, "There was a definite pause between the time he [Switzer] broke our hold and the kick [by Bennett]." He estimated the pause at 20 to 30 seconds. "I still think he was unreasonable, sir, because the hold was broken and Switzer was lying on the ground."

I wish to commend Leutz both on his manner of giving evidence and on the content of his evidence. He was one of the best witnesses heard at the inquiry.

## EVIDENCE OF THOMAS MELVIN DAVEY

C.O. 2 Davey had given evidence earlier, in connection with an allegation by inmate Richard James Gray. He was 47, and he had 14 years' experi-



ence as a correctional officer including six at the Toronto Jail.

With reference to the incident involving Bennett, Davey stated that Bennett had first spoken to Leutz and "Mr. Leutz told me that he had to cover Mr. Bennett and he handed me his keys. I heard the name Switzer mentioned but I did not know what it was pertaining to."

MR. BYNOE. Did you know anything about George Switzer?

A. Yes, sir, I knew he was an epileptic, sir.

Q. Having heard the name Switzer, what if anything did you do or say?

A. At the time, sir, I just heard the name Switzer and I mistakenly took it for granted that he was having another seizure because I had seen him have numerous ones before that. We started into the corridor, the three of us. I left the door to the landing unlocked not knowing if we were going to need any assistance in there in a hurry and we started to walk around to the south side. I asked Mr. Bennett if he had called surgery and he said, what for; I did not think anything too much of it at the time.

Q. Why did you ask the question, if he called surgery?

A. Well, like I said, sir, I thought that Switzer was having another one of his seizures and I wanted to know if there was any medical help on the way there. . . .

Q. What happened then?

A. I let Mr. Bennett and Mr. Leutz into the corridor by pushing a button in the control room, sir.

The control room is the guard station at the west end of corridor 2A south. The south and west sides of the control room are made of glass.

Q. What happened then?

A. They closed the outer gate and I hit the button to open the inner gate, sir, and they just went down the corridor to approximately cell number 8 and Switzer was lying there with a group of other inmates on the floor and I heard Mr. Bennett yell out "Switzer, you get up out of there."

Q. What tone of voice was that?

A. Quite loud, sir. At the time, sir, I had picked up the telephone to call surgery and I did not get any answer and then when I heard this commotion, when I knew it was quite evident that it could not have been a seizure, I hung up the phone. . . . Mr. Bennett and Mr. Leutz leaned down and grabbed Switzer by the arm and raised him to his feet.

Q. Yes, what happened then?

A. Then Switzer started to struggle. He was thrashing out with his feet. I don't know if there was any blows landed, I did not notice at the time, but he struggled quite strongly. . . . Well, Mr. Leutz was behind Mr. Switzer and he had him by the arm. Mr. Bennett had ahold of him from the front by the arm and Switzer was kicking again and all of a sudden Mr. Bennett let go of Switzer and stepped back. He then started to throw kicks at Switzer.

Q. Who is he?

A. Mr. Bennett, sir.

Q. Started to throw kicks at Switzer?

- A. Yes, sir.
- Q. Did any of them land?
- A. They all did, sir.
- Q. Where?
- A. On the legs and various parts of his upper torso, sir.
- Q. Could you tell us how many kicks you observed?
- A. I don't know exactly, sir. I think probably at least 10.
- Q. What if anything did you do or observe after that?
- A. Well, there was quite a few inmates shouting at this time. I could not pinpoint exactly who said what but I heard a voice say, "Let him go, it is not necessary to put the boots to him."
- Q. Now then, what effect if any did the kicks seem to have on Mr. Switzer that you could observe?
- A. He was still struggling, sir, trying to get away from it, but he was not making too much headway.
- Q. What degree of force was there in the kicks, if you can estimate?
- A. I would estimate they were quite hard, sir.
- Q. What was Mr. Leutz doing at the time that the kicking was going on?
- A. He was still holding on to Switzer, sir.
- Q. Mr. Leutz kicked Mr. Switzer?
- A. No, sir, not that I noticed.
- Q. Did Mr. Leutz strike Mr. Switzer in any way?
- A. No, sir.

Davey is the only witness who alleged that Bennett kicked Switzer as many as 10 times. It may be that what Davey interpreted as kicks by Bennett to the number of 10 was Bennett's attempt to sidestep or avoid the kicks or thrashing about of Switzer.

- Q. What did you see Mr. Malouf do? Would you please describe it?
- A. I saw him run over and take a swing at Mr. Bennett and hit him in the face, sir.
- Q. From where you were did you hear Mr. Malouf say anything to Mr. Bennett before he took a swing at Mr. Bennett?
- A. As I stated before, sir, I heard a voice say, "Let him alone, there is no need to put the boots to him."
- Q. What happened then?
- A. Then Mr. Bennett swung back at him and they exchanged a couple of blows. I saw a couple of blows exchanged between them; I immediately ran over and pushed the alarm button then ran back.

Seeing Bennett involved in a fight with one of the inmates and having seen Bennett attacked by another inmate, Davey acted properly in sounding the alarm to bring reinforcements.

- Q. When you ran back what did you see?
- A. When I got back there was no more fighting at this point. . . . Mr. Bennett had ahold of Malouf by the right wrist. . . . And I heard Mr. Malouf say,

"Let me go, I won't do anything as long as you don't hit me." Bennett said, "Okay but you are going out of here," and he let go of Malouf's wrist. Malouf walked out with Mr. Bennett right behind him . . . towards where I was standing outside the sallyport.

As Malouf was walking ahead in the passageway towards the landing, with Bennett behind him, Davey stated, "Bennett took two or three running steps up to Malouf and chopped him on the back of the neck."

Q. What with?

A. With his open hand, sir, like a judo chop.

Q. What effect if any did the blow appear to have on Malouf?

A. It drove Malouf to his knees sir. Quite a bit of force and Malouf ——

Q. Before that blow landed had Mr. Malouf said anything that you heard to Mr. Bennett?

A. Not a thing sir.

Q. Had Mr. Bennett said anything to Mr. Malouf?

A. No sir.

Q. If either one had said anything to one another, would you have heard?

A. Yes sir. . . .

Q. Now, when Mr. Malouf went down, how far down did he go?

A. Right to his knees, sir. . . .

Q. What happened then?

A. He jumped up immediately, turned around, and started swinging at Mr. Bennett, and Mr. Bennett in turn started to punch at Malouf.

Davey said that he then shouted to Leutz to come out of the corridor. He went to where Bennett and Malouf were and reached them before Leutz did.

Q. All right. You said, "Okay, the two of you knock it off, right now," or words to that effect?

A. Yes, sir.

Q. Well, what happened?

A. I spread my hands; Malouf stepped back and said, "Okay, Mr. Davey," and he dropped his hands to his side. When he did that Mr. Bennett charged at him and started raining blows at him again.

Q. What do you mean by raining blows at him?

A. Well, literally punching him out sir.

Q. What did you see him do? Just describe what you saw.

A. I saw a number of blows.

Q. Malouf had his hands down by his side?

A. Yes, sir.

Davey stated that Bennett struck Malouf three or four times.

Q. What happened as the result of the blows to the face to Malouf?

A. Malouf was knocked down, sir, and more or less in the same position with his back against the wall. And it was at this point when Mr. Leutz went

over and he grabbed at Malouf. Mr. Bennett was grabbing at him, I don't know exactly where, sir. And at this point a number of officers, senior officers and guards, arrived on the scene.

Malouf was then taken to segregation.

Concerning the kicks that Bennett had earlier delivered to Switzer, Davey said, "As to the necessity, sir, I don't think it was necessary. But there was considerable force and I think it was overly excessive."

Q. Now then, out in the hallway, is it your evidence that Mr. Bennett struck Mr. Malouf from behind with a judo chop?

A. Correct, sir.

Q. From your observations, was there any necessity for that blow?

A. Not at all, sir.

Q. With respect to the other portion of the incident when Mr. Malouf had his hands down by his sides and was struck in the face by Mr. Bennett, was there anything that you observed that would render that blow or those blows necessary?

A. No, sir. In 14 years in the service, sir, I have never seen anything like it.

On examination by Mr. O'Sullivan, Davey indicated that Leutz and Bennett could have managed the situation in the corridor themselves insofar as Switzer was concerned. He also stated that he had an unobstructed view of Switzer, Leutz, and Bennett.

In answer to questions put by Mr. Bukovac, counsel for Malouf, Davey's evidence was to the effect that Malouf struck Bennett in the face at the time Bennett was kicking Switzer.

MR. BUKOVAC. Was it necessary for Mr. Malouf to come to Mr. Switzer's aid, in your opinion?

A. In my opinion, sir, Malouf was wrong in so far as he attacked an officer but I have to admire him for going to the aid of Switzer.

Davey's version of what occurred in the passageway after Malouf and Bennett had left the corridor was somewhat at variance with the evidence of other witnesses. Davey stated that he did not see Bennett choke Malouf, nor did he hear Malouf cry out for help. He also said that in the brief second or two that he saw Malouf's face he did not see any blood coming from it.

As there was some suggestion of possible colour prejudice on the part of Davey against Bennett, Mr. Clyne dealt with this matter. From Davey's answers and his manner of answering it would appear that he had a less positive relationship with the black correctional officers than many of the other white correctional officers who gave evidence.

Mr. Clyne questioned Davey on his statement that Switzer had been kicked 10 times by Bennett.

Q. You said you saw Mr. Leutz holding Mr. Switzer while Mr. Bennett kicked him approximately 10 times? . . .

A. Approximately 10 times, sir.

Q. Approximately 10 times; is that your best recollection?

A. It is a very good recollection.

Q. A very good recollection?

A. Yes, sir.

Q. Now would you say you had a good view of the proceedings so to speak in your position?

A. Yes, sir.

Q. Right. Would you have had a better view than Mr. Leutz?

A. Mr. Leutz was right there where the action was taking place, sir. . . .

He should have had a better view, yes, sir.

Q. Were you in the room this morning when Mr. Leutz testified?

A. Yes, sir.

Q. Did you hear him say that Bennett kicked Switzer once?

A. I did, sir.

Q. Are you now saying that he is incorrect?

A. I am, sir.

One cannot come to any other conclusion than that Davey's evidence on the number of kicks was against the weight of all other evidence and was incorrect. As stated earlier, one possible explanation would be that Davey misconstrued the movement of Bennett in trying to get away from the thrashing or kicking by Switzer as being kicks by Bennett.

Of course, the number of kicks was not the deciding point in connection with Bennett's action. Rather, it was the fact that there was a hiatus between the time Switzer stopped thrashing about and the administering of at least one kick of significant severity by Bennett against Switzer.

Bennett's action against Switzer was sufficient for Malouf to react strongly, despite the consequences of striking a correctional officer. Perhaps he acted so quickly that he did not have time to consider the consequences. There were also outcries from the other inmates over Bennett's conduct. Although Bennett's actions against Malouf in the corridor were justified as defensive actions once Malouf had attacked him, it would appear that that situation had also come to an end when Bennett, in the passageway outside the corridor, attacked Malouf from the rear.

Mr. Clyne questioned Davey with reference to a statement he had made earlier.

MR. CLYNE. Now, I believe that you stated a while ago you had to admire Malouf for going to the aid of Switzer striking Bennett?

A. I did say that, yes, sir. I also said he was wrong, sir, doing it.

Q. Do you normally admire inmates when they strike guards?

A. Not at all, sir.

Q. Not at all, but you admired in this instance?

A. Yes, sir.

The above questions were, no doubt, directed to Mr. Clyne's argument that Davey was prejudiced against Bennett.

On the matter of the employment of black correctional officers, when they appeared before the Commission they were treated in the same manner



as white correctional officers, as, of course, they should have been. Some of the inmates who appeared before the Commission were black and, in fact, on the Bennett episode, some of the inmates who were in corridor 2A south at the time of the attack on Switzer were black, and they too confirmed the attack by Bennett against Switzer.

It is unfortunate, in viewing this incident, that the issue of colour had to be injected as an added dimension. Had Bennett been white, the incident would have occurred in the same way as long as Bennett, Switzer, and Malouf were of the same temperament and character that they had displayed.

Davey was questioned again, this time by the Commissioner, with reference to the statement he made about his "admiration" of Malouf's action.

THE COMMISSIONER. Just one question, Mr. Davey. With reference to admiring the action of Mr. Malouf, why do you say that you admire his action?

A. Well, because Switzer was taking a vicious beating from Mr. Bennett, sir, and there was absolutely no need for it, and while I admire Malouf I still say he was wrong in attacking Mr. Bennett.

Q. I just want to know the cause of your admiration or the basis of your statement, that was all. And you have given me the answer.

A. I think it was only natural, sir, for Malouf to go to Switzer's aid because of the beating he was taking.

## EVIDENCE OF EDWARD TORRANCE

C.O. 1 Torrance said that he heard the alarm at about 4:00 p.m. on May 7 and went to the Chief's office. He then proceeded with seven or eight other officers to 2A south in the new building. C.O. 5 John Moquin and C.O. 3 James B. Brown were ahead of him. When he arrived he saw Bennett and Leutz struggling with Malouf. He was not sure what Leutz was doing, but said that Bennett was holding Malouf around the neck and Malouf was bleeding from the nose area. He assisted Brown in putting Malouf in a come-along hold and then escorted him to segregation. On the way, Malouf was struggling but did not become free. He was shouting, "Let me go," but eventually quietened down and went into 2B segregation area by himself.

Torrance did not see Bennett strike Malouf at any time which would indicate that his arrival was after Malouf and Bennett had left the corridor and gone through the sallyport and part way along the passageway.

## EVIDENCE OF DESMOND PATRICK BERNARD

This inmate was 23 years of age. He had completed Grade XIII in high school and also one term of university. His record went back to 1970 when

he was at university. There were four convictions for breaking and entering as well as convictions for fraud and theft.

Bernard said that he was in 2A south on May 7, 1975, when Bennett came on duty and asked if there were any purchase orders. Bernard applied for one, and he also put in for a request. He said Switzer also asked for a purchase order and was told by Bennett, "It is already finished. I am doing requests, personal requests."

Bernard said that Switzer then asked for a request. The general evidence would indicate that the purchase order is not signed by the inmate at the time an application is made. However, a request order is on a separate form and this form is signed by the inmate.

MR. BYNOE. Did you see the paper in the hand of the guard or did you see an indication that the guard was writing something down when speaking to Mr. Switzer?

A. Well, yes. He was making the proper request, whatever that consists of.

Q. All right. What if anything did Mr. Switzer do or say after that?

A. I heard George, you know, [say] "I can't write my name."

Q. You heard him say that?

A. Yes.

Q. All right.

A. And Mr. Bennett laughed, you know, a humorous thing, you know. But you see I guess he was not aware at the time, maybe this inmate, you know, is ribbing, which he was not. . . .

Q. . . . the guard thought that Mr. Switzer was joking with him?

A. Yes.

Q. So he laughed at that. All right, then what happened after that?

A. Mr. Bennett . . . stated you have to sign your name, you know, like it is a proper thing. It is an everyday thing.

Q. Right.

A. Switzer said, "I can't write my name." Now, at this time, I heard it again, the tone of his voice, the way he said it, he was sincere. Okay. He [Bennett] laughed again. . . . Switzer got upset. Now, he told the officer, "I can't sign my name, you know," or he said words before that.

Q. Were they profane?

A. Yes.

Q. All right.

A. So at that time the inmate, George Switzer, got mad. Now he threw a cup, not directly at Mr. Bennett, like, right in front of him, but just down aways on the same grille and then he proceeded to lay down on his mat.

Q. What happened to the cup?

A. It smashed.

Q. Did you see any of the pieces of the cup strike Mr. Bennett?

A. No, I did not. . . .

Q. Did Mr. Bennett react in any fashion that indicated to you that he was struck by any piece of the cup?

A. No. . . . He did not react on the grounds of that cup hitting him in any way, shape or form.

Q. Now then, Mr. Switzer, you indicated, did something. What did he do

after he threw the cup?

A. . . . he proceeded to lie down . . . Mr. Bennett was upset not over the cup but to the fact that Mr. Switzer, inmate, used [profane] language . . .

Q. And calling names at Mr. Bennett?

A. He was not calling names. He was just swearing due to the fact that he could not write his name and you overlook it, you know.

Q. Now then what did you next see Mr. Bennett do, if anything? . . .

A. He packed all the requests and papers and put them in a bag and split [departed].

Bernard said Leutz came into the corridor with Bennett a couple of minutes later and Davey remained outside to cover. Bennett proceeded to where Switzer was lying.

Q. What if anything did Mr. Bennett say?

A. He says "get up" and Switzer refused, you know. . . . He said, "I am not going to get the [deletion] up unless I know why."

Q. All right. What if anything did Mr. Bennett say to that?

A. Well, I guess when he heard Mr. Switzer's statement, he just, you know, went to proceed to pick him up.

It was Bernard's opinion that it was only Bennett who grabbed Switzer and that Leutz was "just standing there". He stated that Switzer rebelled and struggled. "Mr. Bennett just grabbed him and tried to get him up on his own feet."

Q. Now then, Mr. Switzer was rebelling, as you put it, and he wouldn't stand up?

A. No.

Q. Mr. Bennett was holding him by the arms trying to get him up. What happened then?

A. Well, from what I observed, maybe five feet away, or maybe six, he was struggling to go towards the grille. The inmate seemed to be gasping, you know, like something was wrong with him.

Q. Yes?

A. Now it just occurred to me that he was having a seizure due to the fact that I experienced two events earlier that morning when he first came into the corridor in the morning. This is how I remember it must be a seizure.

Q. Are you indicating that he had two different seizures before?

A. Before this event.

Q. Before Mr. Bennett entered the premises?

A. Yes. . . . And Mr. Bennett was still struggling to get him up on his feet. Mr. Switzer apparently was, you know, twitching, like he was - like a vibrator, you know, his whole body. Mr. Bennett proceeded to kick him. . . .

Q. Whereabouts on Mr. Switzer's body did they land?

A. Well, in the stomach area.

Q. You are indicating by gesture from the middle of the chest down to about

the navel.

A. Yes. It could be the rib cage, the navel, you know, in that area.

As for the reaction of the other inmates:

A. Well, they reacted by yelling.

Q. What was yelled out? Do you recall any words?

A. Yes, various inmates told Mr. Bennett . . . to lay off, and he is having a seizure. . . . Now Mr. Bennett gave another kick and tried to yank him up. . . . Mr. Malouf was sitting next to Mr. Switzer . . . Mr. Malouf told them to . . . leave him alone, he is having a seizure. . . . Mr. Bennett did not respond. . . . He [Malouf] jumped up and he tried to separate them. . . . He just tried to separate Mr. Bennett from the inmate George Switzer.

Q. How?

A. He pushed them, tried to push both parties. . . .

Q. You are indicating that Mr. Malouf got in between Mr. Switzer and Mr. Bennett?

A. Yes . . . When Mr. Malouf tried to separate Mr. Bennett from inmate George Switzer, Mr. Bennett with his hand hit Mr. Malouf . . . in this area . . .

Q. You are indicating the area on the right side of the neck and jaw?

A. Yes.

Q. What did Mr. Bennett hit Mr. Malouf with?

A. Well, it was a back-hand, it was his hand. . . .

Q. And then Mr. Malouf having received this back-hander as you have indicated, what if anything did he do or say? . . .

A. He reacted I guess to – he reacted right there and then.

Q. Just tell us what he did?

A. He hit Mr. Bennett.

Q. What with?

A. With his hand.

As for Leutz, Bernard said, “Well, Mr. Leutz, it took him a second to get his bearing together and he proceeded to restrain Mr. Malouf.”

Bernard mentioned inmates named Johnson, Spencer, and Kobelnak who had been quite excited about what they had seen in the passageway in connection with the attack by Bennett on Malouf. Bernard himself did not see this attack and said that the first thing he saw was the arrival of the senior officers.

In an effort to expedite the hearing of the Switzer-Malouf matter it was agreed by Commission counsel and all counsel representing various interested parties that it was not necessary to call all the inmates and all the correctional officers who were involved, since much of the evidence would be corroborative with some minor variations. I am satisfied that no relevant evidence was omitted. The hearing was therefore expedited. Even so, the evidence took eight full days, comprising some 1,657 pages of transcript, and 23 witnesses were heard. In addition, some witnesses were recalled.

Male nurse Pierre Cabon and nurse Mary Edna Kendrew came up to the



corridor and assisted Switzer. As for the injuries shown in the photographs filed as exhibits of Malouf, it was the evidence of many of the inmates that Malouf had no sign of injury on him when he left the corridor and proceeded through the sallyport. The summation of the evidence of the inmates who went to the west side of the corridor and saw what transpired in the passageway was that the attack of Bennett on Malouf caused the injuries shown in the photographs.

## EVIDENCE OF WALTER REGINALD McCULLOUGH

This inmate was 57 years of age. He had a criminal record dating back to 1937. He said, "The greater majority of my record is forgery or fraud." At the time of this occurrence he was in jail in connection with an attempted fraud charge on which he was convicted on May 28, 1975. He had been in jail from about May 7, awaiting trial.

When he gave evidence, he was an inmate of Camp Hillsdale, a minimum security institution.

MR. BYNOE. Have you ever had any difficulties with prison rules or regulations while you have been in custody, Mr. McCullough?

A. No, sir. I don't think in my memory that I have ever been convicted of any offence against the system or the rules and regulations of any institution that I have ever been in.

McCullough's evidence, aside from the Bennett-Switzer-Malouf incident, was of general interest, coming from a man who had spent most of his life in custody and had been able to abide by the rules wherever he had been incarcerated.

At the request of the Commission, McCullough forwarded an interesting brief, dealing in part with the problems encountered by ex-inmates after they leave penal institutions in trying to rehabilitate themselves. He also had some observations to make as to the problems of staff and young inmates.

McCullough said he had been a heroin addict for many years. He indicated that he had a Grade VIII education when he first entered a penitentiary, but in time acquired a B.A. in Kingston and obtained a master's degree from the University of Alberta at a later date. He certainly appeared to be a perceptive and worldly individual.

As for the incident that occurred in May 1975, McCullough stated.

A. My first awareness that there was something wrong — I heard a cup hit the grille and smash. Almost instantly there was a loud argument occurring between an inmate by the name of George Switzer and the officer, Mr. Bennett. . . . I did hear something about a name, and I heard Switzer



cursing and swearing.

MR. BYNOE. Do you recall what you heard about a name – what type of name?

A. I would rather not say, sir. I simply know that I heard something about the way he signed his name . . . and there seemed to be dialogue of great irritability on the part of Mr. Switzer. . . .

Q. Now then, having heard whatever you heard, you said he walked away. Who was it that walked away?

A. George Switzer.

Q. And where did he go, and what did he do?

A. He walked almost over beside me and lay down on a mat. He might have been a couple of cells down, not much further.

Q. And what, if anything, did you observe about Mr. Bennett?

A. Well, Mr. Bennett – Mr. Bennett was screaming and hollering. He was shouting. He was overreacting to a situation that he would have been very wise to just totally ignore because the boy did walk away. . . .

Q. But is there any doubt about your statement that Mr. Bennett was shouting?

A. None whatsoever.

Q. Well, then, did Mr. Bennett remain there, or did Mr. Bennett leave?

A. Almost simultaneously. Now Switzer lay down on the mat, and immediately went into some type of convulsion. I was watching that. Now I would say within a matter of 30 or 40 seconds Mr. Bennett was in there.

Q. In where?

A. Right inside the corridor. He came through the sallyport through two doors, and was there.

Q. Was there anyone else there?

A. Yes, there was another officer.

McCullough was of the opinion that Switzer was not aware of what was going on, and he did not hear him say anything. He said that Bennett ordered Switzer up and then “proceeded to kick him”. He stated that Bennett reached down and grabbed Switzer by his pyjamas and ordered him up. When Switzer did not answer him, McCullough stated,

A. Mr. Bennett proceeded to kick Switzer. He just totally overreacted. He just rained kicks on the boy and almost the same instant all the inmates in the corridor migrated up into that area. They had previously been down at the table which is halfway in the corridor, maybe a little better than halfway towards the back. They immediately moved up there. About this time I got a bad kick which sort of knocked my breath out. I don’t know who from, I was not interested. The only thing I was interested in was getting out of the area.

Q. Are you able to tell us approximately how many kicks that you observed Mr. Bennett made?

A. I would say three or four. . . . This was when I got frightened because I thought we were really going to have a battle here.

Q. What caused you to think or say that?

A. I know how inmates react. The scene was fraught with peril. I looked for other guards and I saw Mr. Davey at the end reach for the phone and I knew that within a short time there would be guards there. In the meantime, an

inmate by the name of Stanley [Malouf] . . . the first thing he did was say, "Stop kicking the ep. He is having an epileptic fit, stop kicking him."

Q. Who did he say that to?

A. Mr. Bennett.

Q. Did Mr. Bennett appear to acknowledge that he had heard that statement?

A. It appeared to incense him all the more.

Q. Why do you say that?

A. Well, there was a speed-up in his physical reaction to this challenge of Stanley and the other inmates.

From this point on, the evidence of McCullough is at variance with that of the majority.

McCullough's evidence is another example of a variation in the perspective of an event by different observers, particularly his opinion that Switzer was in an epileptic state prior to being kicked by Bennett.

But no matter what the variations were between witnesses, all except Bennett agreed on one thing, that there was a deliberate kick of an inmate by Bennett.

## EVIDENCE OF GLEN ROY BENNETT

C.O. 2 Bennett was 40 years of age. He gave his height as 6' and his weight as approximately 207 pounds. He was born in Jamaica.

He stated that he was a police constable for four and a half years as a member of the Jamaican constabulary and that he had worked in both rural and urban settings. His education was approximately equivalent to Grade XII in Ontario. He emigrated to England and was employed for seven years with the London Transport Commission and the Birmingham and Midland Omnibus Service. He arrived in Canada in November 1973 and worked for a short time with the Toronto Hydro. He attended Seneca College for 10 months and obtained a certificate in commercial accounting. He stated that he applied to the Ministry of Correctional Services when entering Canada in November 1973, received a reply in August 1974, and commenced employment in February 1975, being assigned to the Toronto Jail.

MR. BYNOE. Now then, what training did you have with the Ministry?

A. Well, I didn't have any formal training when I started. I started working on the corridor under the supervision of more senior officers.

Q. Did you receive any other formal training for your duties?

A. Yes, sir. On the 7th of April I attended a training course just across the road from the Don Jail for two weeks.

As for the May 7 incident, he stated, "As I started on my tour of duty, I went to the inmates first with the requests for tobacco orders and shouted

through the grille, "Tobacco orders". . . . Inmates came forward and made their requests and then left. When no other inmate was standing there I shouted again and no one came forward so I took the sheet with the names back to my position around 2A north."

Bennett said that he took the purchase form back to the desk at the guard station and then he proceeded with requests.

A. On arriving at the grille, I shouted, "Requests," and inmates came forward and lined up. At the same time, at the head of the queue, was inmate George Switzer. . . . He said he wanted a tobacco order. I told him I had already collected the tobacco orders and I was now taking the usual requests.

He stepped back and he said, "I want a tobacco order now." I said, "If you can wait until I take the usual requests you can have your order." He was a bit upset and then he said, "If I don't get my tobacco order now I will smash this cup over your . . . head."

I turned my attention from him and looked towards the queue and said, "Who for orders, who for request?" And at the same time George Switzer stepped back and threw the cup in the direction of my face. It came against the bars and shattered, fragments falling on the inside and outside and particles splattering me in the face.

I stopped what I was doing, collected the papers which I had, put them in the bag, and moved away from the area.

Q. Did you say anything before you did that to Switzer?

A. Yes, sir.

Q. What did you say?

A. I said, "Switzer, will you come outside?" He said, "You can go and tell the sergeant and the lieutenant, I don't . . . care." And then he started walking down the range towards the television.

Bennett said he then went out to the B landing and explained the situation to Davey and Leutz. This is denied by Davey who said that Bennett spoke to Leutz and not to him as to what had occurred. In any event, the three correctional officers went back to 2A south. Davey stayed in the control room and Leutz and Bennett entered the corridor. "Switzer was now lying on the mat watching television, I told Switzer to get up and he said, 'I'm not getting up.' Mr. Leutz and myself then went to lift Switzer up bodily."

Bennett said that Leutz and he were holding Switzer and "about to yank him straight up so that he could stand up."

A. At the same time, Mr. Switzer started kicking out and wrestling, his feet landing on my legs, and this section of my body.

Q. You're indicating your upper legs and the portion of your body below your belt?

A. That is right.

Q. Yes.

A. We had actually got him to his feet and he was still wrestling and kicking but I noticed he was not kicking at Mr. Leutz at all. His kicks were directed at me. . . . He made a sudden thrust as though he wanted to break loose, and

at the same time he was kicking he broke loose from my hand, and he was kicking out. I raised my right foot and blocked the blows that he was kicking out because he was kicking at me.

Q. What were you going to block?

A. Block his kicks that were directed at me.

Q. Yes.

A. He was still held by Mr. Leutz at the same time. Almost simultaneously as I did that, Stan Malouf, who was on the other side of the grille, the northern side, came forward like a raging bull and he hit me about three or four blows to the left side of my jaw.

It is difficult to understand why Malouf would, to use the words of Bennett, come "forward like a raging bull" and then hit Bennett three or four times in the face if all Bennett did was block the kicks directed at him. The probabilities of this story and the weight of the evidence are against accepting Bennett's suggestion that all he did was raise his foot for the purpose of blocking Switzer's kicks.

Bennett said that the only reason he did not fall as a result of Malouf's attack was from a "fear of complete annihilation" and "a strength of character". He also said that he reacted by trying to restrain Malouf and that Malouf was "using his knee and his fists and still punching".

Bennett said that he "eventually went behind him and held him until he said, 'All right, all right, let go of me now, I can walk out.' I released my hold from him and he started walking towards the grille."

According to Bennett, while they were in the corridor he did nothing more than raise his foot to block Switzer's kicks and did nothing more when attacked by Malouf than to go behind him and hold him. I cannot accept these statements. Again, the balance of probability in view of the situation at the time and the weight of evidence are both against Bennett.

Coming to the passageway, he agreed that Malouf was walking in front of him and then.

A. I saw him spin around like a ferocious animal and he was coming straight with his fists at me and I raised my hand and went back straight at him and we started punching each other. While we were punching each other he came up with his knee again and we came in close up where we held onto each other.

Q. Grappling and holding onto each other.

A. Yes.

Q. Up to that stage, had you struck Mr. Malouf in the face?

A. That I would not swear to, sir. It is possible that I might have done it. It is possible because we had struck each other blows.

Q. I note that you are wearing two rings on your left hand, Mr. Bennett. Do you normally wear two rings on your left hand?

A. Yes, for quite a long time, yes.

Q. You were then grappling with one another?

A. Yes.

Q. What happened then, please?



A. And somehow or other, I don't know what caused it, but we both fell to our knees on the ground and it was then, when we got up, that I noticed his face was bleeding so it is possible that I might have struck him on his face when we were punching each other.

Bennett then said that Leutz appeared on the scene and grabbed Malouf's arm and he (Bennett) then shifted his grasp and tried to give Leutz a little help. He indicated using the crook of his elbow and drawing it across the neck area.

Other correctional officers then arrived and took over and escorted Malouf to segregation, and Bennett did not follow. He went back to the area and started to look for his watch and glasses. He said that he never recovered his watch and, as far as his glasses were concerned, one lens was missing.

In addition, he sustained an injury to his hand and there was a suspected fracture. He went to St. Michael's Hospital. His hand was X-rayed and put in a cast. Some time later he developed severe pain to the left side of his jaw. His jaw was subsequently X-rayed, also at St. Michael's Hospital. The X-ray of the hand was negative for a fracture. As far as his jaw was concerned, he was told that there was a possible dislocation.

Bennett said he was working a few days later on 2B landing (the segregation area) and saw that Malouf had "a shiny eye and a scar on his nose". He stated that Malouf's nose was about the same as indicated in the photographs, but the eye was "a bit more puffy". As for the mark on Malouf's windpipe, Bennett said.

A. I could not for sure say how it came there, sir. But, what I can really say, at that point I would have done anything to subdue him.

Q. Why was that, sir?

A. Because his tendencies were rather ferocious and animalistic.

Q. In what way?

A. The way he was coming at me it was as though if he had the opportunity he would have gotten rid of me then; he would have killed me.

Bennett was questioned about the evidence of other witnesses.

Q. Mr. Leutz indicated in his evidence that when you were out in the passage-way you grabbed Mr. Malouf in your hands, by your hands rather, and that it was a type of choke-hold. Do you recall having any such hold on Mr. Malouf?

A. No, sir. The only hold I can remember that I tried to put on him was one of these pressure holds with my fingers resting against his collar bone, his subclavian bone. That is the only hold I can remember, but not a choking hold.

Q. Now, having heard the allegation made by these various witnesses with respect to conduct they attribute to you, I would like you to direct your mind to perhaps three different stages?

A. Yes.

Q. The first stage is the initial one – what transpired between yourself and Mr. Switzer in the corridor, and then your entering with Mr. Leutz and demanding Mr. Switzer to get up, and then what transpired after that. I think



it is clear from a number of witnesses that they allege that you deliberately kicked Mr. Switzer on more than one occasion, in most instances as many as five. Most witnesses have indicated two or three kicks and I think Mr. Leutz indicated one kick.

A. That is right.

Q. You have described in your evidence that you raised your foot but it was for the purpose of blocking Mr. Malouf or Mr. Switzer's kick towards you?

A. That is correct, sir.

Q. And the allegation I think is clear on the part of those who have so testified that you deliberately kicked Mr. Switzer. Now, what, if anything, would you like to reply to that allegation?

A. Well, I would certainly say, sir, without any shadow of a doubt that if I had intended to kick Switzer at that point I would not be here at the Royal Commission. I would be charged with homicide. I am aware that Switzer is a sick man. . . . I have worked on the corridor where he was and if I should give him a kick I do not think he could survive it.

Q. There was some suggestion, Mr. Bennett, that other inmates had been taunting you and that you had become upset and I think they indicated you lost control. What if anything would you like to say about that?

A. Well, I have perfect control of my faculties, sir. When I am taunted by inmates I know that they are, their normal reaction is to get you started or to get you heated and the most thing I do when they taunt me at the most I may laugh. I do not respond; I just laugh.

Q. Well now, with respect to Mr. Malouf, I am going to break down the evidence into two distinct incidents. Firstly, the evidence, whatever it was, that occurred in 2A south. Some of the witnesses allege that you were kicking Mr. Switzer and that Mr. Malouf got up, asked you to stop, he grabbed you, and that you broke the grip and gave him a back-hand that landed on his face and that he responded by hitting you and that you and he were engaged in a fight. What, if anything, would you like to say about that?

A. To that I say, that is completely false. When Malouf came across I did not hear him utter a word. He just came across and punched me three to four times on the left side of the face, at the same time using his knees. I did not hear him utter a word, neither did he hold my hand.

Q. Now then, the next incident or area of the evidence I would like to direct your mind to is what occurred in the west passageway just to the north of the sallyport door and up to the other grille that leads through to the north. Do you know the area?

A. Yes, sir.

Q. Now there is some evidence that Mr. Malouf had calmed down in the corridor, that he walked out under his own control and that he was going peacefully and that you were following along behind him, and there is some evidence that when he turned the corner at the grille to go north towards 2A that you came from behind and struck him in the middle of the back, according to Mr. Malouf. There is another statement, I think by Mr. Davey in particular, [that] you came along behind this man who was going his own way and struck a karate-type blow to the back of his neck and in addition to that a fight then transpired. According to Mr. Malouf he was held by

Mr. Leutz and while his hands were behind his back you systematically punched him in the face a number of times. Now that is one part of the allegation.

Another version of the evidence indicates you gave a karate chop to this man in the back of the neck. He went down, Malouf turned around, got into a fight and that Malouf after a short time put his hands down and stopped and disengaged and that you seeing the man's hands down by his sides punched him again and started to fight again.

What, if anything, do you wish to say with respect to both of those versions?

A. Well, I cannot really give you a straight answer to both of those versions but I can tell you what happened. It was as we negotiated the turn going north, Malouf sprung around and lashed out with his right hand. I raised my hand, I blocked, and I started punching just the same and we were engaged in punching each other.

Q. Did Mr. Malouf say anything as he turned around to face you or before?

A. No, sir, he did not say anything but what I assume it was as he has testified he got the better of me in the corridor, he just wanted to finish the job he had started.

Q. That is one answer, the other answer, if he was correct, sir, was that having received the worst of it out in the corridor you were then in a position outside free from all the other inmates and having additional support would then be able to exact your own pound of flesh by taking such an offensive action as described by Mr. Malouf and some of the other inmates. Now I don't expect you to answer that. I just make that as a statement, as being one alternative. Is there any truth to the suggestion that you were upset to the degree that you lost control of your actions?

A. No, sir. I have never lost control.

As to the delineating of the issues by Commission counsel and Bennett's answers, I shall leave it to the reader to judge how acceptable the evidence of Bennett was in the light of the other evidence given by both inmates and fellow correctional officers. Personally, I am unable to accept Bennett's explanations.

There was further questioning with reference to the pressure hold, and Bennett indicated that he had not learned this through any course taught to correctional officers.

I have been rather impressed with some demonstrations of an art known as "defendo" as advanced by an 81-year-old gentleman, a Mr. Bill Underwood of Toronto. It is a combination of jujitsu, unarmed combat, the use of simple holds, and utilization of pressure points. It does not depend upon strength or size and, rather than being an aggressive form of physical contact, it is according to its exponent designed solely for defensive purposes. I would suggest that this type of training be included in the syllabus for correctional officers.

THE COMMISSIONER. Now in answer to a question that Mr. Bynoe put to you, asking you if you did kick Switzer, your answer was: if you intended to kick him, Switzer couldn't survive. But I don't know that you answered the question

directly. I am going to put it to you: Did you kick Mr. Switzer?

A. No, sir, I raised my foot to block his kicks.

Q. Did you come in contact with him when you raised your foot to block his kicks?

A. It is possible, sir, because the attack was simultaneous with my raising my foot.

Q. And if you came in contact with him, what part of his anatomy would you have come in contact with?

A. I couldn't say that for sure, sir.

Q. And did you raise your foot more than once?

A. No, sir, just once.

Mr. O'Sullivan, in his cross-examination, obtained an admission from Bennett that his evidence with reference to whether he intentionally kicked Switzer was contrary to that of "14 or 15 other witnesses".

MR. O'SULLIVAN. Mr. Bennett, do you have any explanation, or are you alleging any type of conspiracy against you by your former fellow employees who testified that you kicked Mr. Switzer either once or a number of times?

A. I am not trying to say that they have conspired. I would entirely ignore Mr. Davey's testimony as not having a shred of truth in it. But Mr. Leutz, the only thing I can say about his testimony is that probably he overdramatized the part where he said that I kicked, rather than blocked Mr. Switzer's kick.

As for the alleged blocking of the kick that Bennett said was administered against him by Switzer:

Q. Now, with respect to this block, how high did you lift your foot?

A. I think it might have gone about waist high.

Q. I see. Your waist or Mr. Switzer's waist?

A. Mr. Switzer's waist.

Q. And was your leg extended or was it bent?

A. It was slightly bent.

Q. And you would agree that Mr. Switzer is somewhat shorter than you?

A. Oh, yes.

Q. And you expected to block blows from his feet with your foot at his waist level?

A. No, I have said he was jumping off the ground. He was springing up. He was acting as a lever between myself and Mr. Leutz. He sprung off the ground to kick out.

Q. So you stood there balanced on one leg with your leg at his waist level?

A. That is right.

Q. That is your evidence?

A. That is right.

Mr. Bukovac, counsel for Malouf, questioned Bennett on one of his statements.

MR. BUKOVAC. You have stated you were attempting to block Mr. Switzer's kick, simultaneously with that blocking, Mr. Malouf came at you. I believe you had stated "like a bull". Is that correct?

A. Oh, yes.

Q. Well, can you explain why would Mr. Malouf come at you for no reason?

A. I would say that Mr. Malouf was poised and was waiting for an action that would probably look like an assault or he was probably moving up and waiting for the opportunity to strike.

I do not find this explanation of Bennett's reasonably acceptable in view of other evidence. I do not believe that Malouf's action was premeditated but rather a result of what he considered to be an injustice, namely Bennett's kicking of Switzer.

The evidence in the Bennett affair revealed that homosexuals and heterosexuals charged with sexual offences were housed in the same corridor. This was, presumably, for protection purposes. It would be preferable if the two groups were housed separately and also away from the general population. But this is a matter that may be dictated in part by the available space in the jail, the persistent overcrowding at the Toronto Jail, and the matter of classification. It may well be argued that these two groups, although indicating sexual tendencies and propensities differing from those of the general jail population, really have nothing else in common. There may well be arguments why, for protective purposes, each of these two groups should be separated from the other.

As for Switzer, it has already been indicated that he should have been in some facility other than the Toronto Jail because of his own special problems and need for treatment. With the improved and expanded facilities in the psychiatric wing at the Toronto Jail it may well be that a person such as Switzer would now be housed on the fourth floor of the new wing rather than as he was, in 2A south.

## MALOUF AND SWITZER SUMMARY

There is no doubt that Switzer's behaviour required some disciplinary action. He threw an object (the cup) in the direction of Bennett. He used profanity towards an officer. Subsequently, when ordered to leave the corridor (or range), he disobeyed the order. The events that preceded Switzer's actions constituted an explanation, but not a lawful excuse, for his conduct, which cannot be condoned. Similarly, what Bennett did later, namely, kicking the inmate, has been explained, but it, too, cannot be justified. There is no doubt that Bennett used unnecessary and excessive force against Switzer. According to Leutz, "It endangered everyone's life that was in there."

It was fortunate that more serious results did not develop beyond Malouf's

attack on Bennett. Once again, an action was taken that could not be condoned but was nevertheless understandable. Davey even went so far as to describe it as both "admirable" and "wrong".

Bennett was justified in striking Malouf in the 2A corridor on the grounds that he was fully entitled to defend himself from an inmate's attack. The situation in the passageway after they had gone through the sallyport and were on their way to the segregation cells was quite different. I find that matters at that time were under control and that Bennett unnecessarily struck the inmate in the back. This last attack, which may also have included hitting Malouf in the face while his hands were down, or while he was being held, was unwarranted and constituted a separate incident in which excessive and unnecessary force was used. Although it was all part of the larger sequence in which Bennett had completely lost control of himself, the result was that he had first assaulted Switzer and later Malouf.



# Post-Hearing Allegations

Certain allegations were directed to the Commission after our main hearings ended in November 1975. Although we sat on subsequent occasions, it was primarily for the purpose of filing additional exhibits to the “write-ins” and to deal with other matters that originated prior to November 1975. We considered that some cut-off date had to be set in order that we not constitute ourselves as an ongoing Commission. It was sufficient that we were left with masses of evidence, exhibits, and other material which had to be read, considered, collated, and then reported upon. We therefore contented ourselves with examining and acknowledging all further correspondence and telephone calls and redirecting them either to the Ministry of Correctional Services or the Toronto Jail.

In some cases a complaint we received was in addition to one made to some other authority. The fact that allegations continued to be made, whether they were valid or not, did indicate the need for some permanent agency associated closely with the Toronto Jail, to whom such complaints could be addressed. Such a body could then initiate investigations and, where appropriate, recommend and direct remedial steps. It is our considered opinion that the proposed Toronto Jail Council would be the best agency for this purpose, for reasons set out in more detail in the recommendations.





His Honour Judge B. Barry Shapiro is the Senior Judge of the County Court of the Judicial District of Peel, which adjoins Metropolitan Toronto and encompasses the municipalities of Mississauga, Brampton, and Caledon. The district includes the Toronto International Airport. The court, whose judges are federally appointed and also serve as local judges of the High Court of Ontario, tries criminal and civil cases, both jury and non-jury, as well as dealing with Surrogate Court matters. Judge Shapiro has served as Chairman of the Peel Regional Board of Commissioners of Police since the force's inception in 1973. Before his appointment to the Bench in 1971, he was an active trial lawyer and a Bencher of the Law Society of Upper Canada. He is a past president of the Medico-Legal Society of Toronto. He served overseas during World War II, holds the rank of colonel in the Canadian Forces Reserve, and was one of the Aides-de-Camp to the Lieutenant-Governors of Ontario from 1958 to 1974. The Royal Commission on the Toronto Jail and Custodial Services has drawn on his experience in the disciplinary arts and brought to the fore his general concern for people and particularly for those convicted persons who have been sentenced to periods in custody. During the Commission's hearings, this interest was broadened to include correctional staff.



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